DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 403 and 408

RIN 1215-AB34

Labor Organization Annual Financial Reports

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

ACTION: Final Rule

SUMMARY:

The Department proposed to revise the forms used by labor organizations to file the annual financial report required by the Labor-Management Reporting and Disclosure Act (LMRDA). This document sets forth the Department's review of and response to comments on the proposal and the changes that will be made to the Form LM-2 used by the largest labor organizations to file the required report. The Department will require each labor organization that has annual receipts of $250,000 or more to file a Form LM-2 electronically and to itemize receipts and

disbursements of $5,000 or more, as well as receipts not reported elsewhere from, or disbursements to, a single entity that total $5,000 or more in the reporting year, in specified categories. The Department has combined two proposed categories ("Contract Negotiation and Administration" and "Organizing") into a single schedule entitled "Representational Activities," added a category entitled "Union Administration," combined the proposed categories for "Political Activities" and "Lobbying" into a single schedule, and eliminated the category entitled "Other Disbursements." Reporting labor organizations will be permitted, however, to report sensitive information for some categories that might harm legitimate union or privacy interests with other non-itemized receipts and disbursements, provided the labor organization indicates that it has done so. Using this procedure, however, will constitute just cause for any union member to review the underlying data upon request. Moreover, under the statute (29 U.S.C. 436), the labor organization must maintain the records for inspection by the Department. The new Form LM-2 will have schedules for reporting information regarding delinquent accounts payable and receivable, but specific information need only be reported for accounts that total $5,000 or more during the reporting year. The revised Form LM-2 will require labor organizations to report investments that have a book value of over $5,000 and exceed 5% or more of the union's investments. A new schedule will require labor organizations to report the number of members by category, but will allow each labor organization to define the categories used for reporting. Reporting labor organizations must estimate the proportion of each officer's and employee's time spent in each of the functional categories on the Form LM-2 and report that percentage of gross salary in the relevant schedule.

Labor organizations that have $250,000 or more in annual receipts will be required to file a Form T-1 for any trust in which the labor organization is interested, if the trust has $250,000 or more in annual receipts and the labor organization contributed $10,000 or more to the trust during the reporting year, or that amount was contributed on the labor organization's behalf. Unions with less than $250,000 in annual receipts will not be subject to this requirement. No Form T-1 will be required if the trust files a report pursuant to 26 U.S.C. 527, or pursuant to the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1023 (ERISA), or if the organization files publicly available reports with a Federal or state agency as a Political Action Committee (PAC). Finally, a labor organization may substitute an audit that meets the criteria set forth in the Instructions for the financial information otherwise reported on a Form T-1 for a qualifying trust.

EFFECTIVE DATE: This rule will be effective on January 1, 2004, but will apply only to annual financial reports filed by unions for fiscal years beginning on or after January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Lary Yud, Deputy Director, Office of Labor-Management Standards (OLMS), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-5605, Washington, D.C., *olms-public@dol.gov*, (202) 693-1265 (this is not a toll-free number). Individuals with hearing impairments may call 1-800-877-8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

On December 27, 2002, the Department issued a notice proposing revisions of the forms used by labor organizations to file the annual financial reports required by section 201(b) of the LMRDA, 29 U.S.C. 431(b). As the notice explained, the proposed revisions were based upon the fact that the American workforce and labor organizations have changed dramatically over the last forty years and the fact that the form used by labor organizations to report financial information has not changed significantly in the same time period. The proposed revisions also reflected the Department's belief, based on the accumulated experience of investigators and other staff in the Employment Standards Administration's (ESA's) OLMS, that more detailed and transparent reporting of labor organizations' financial information would be more useful to union members, more effectively deter fraud, and enable OLMS investigators to more easily discover fraud when it occurs. Finally, the proposal noted the Department's view that, because of technological advances, these revisions will impose less burden on labor organizations than revisions proposed in previous years.

Before issuing this proposal, various Department officials met with many representatives of the regulated community, including union officials and their legal counsel, to hear their views on the need for reform and the likely impact of changes that might be made. The Department's proposal, developed with these discussions in mind, requested comments on numerous specific issues in order to base any revisions on a complete record reflecting the views of the parties affected and the Department's responses. In addition, the Department contracted with a professional provider of information technology services, SRA International (SRA), to assess the technical feasibility of electronically collecting and reporting the information that would be

required by the proposed changes. The Department initially provided for a 60-day comment period, but later extended that period for an additional 30 days.

When the comment period closed, on March 27, 2003, ESA/OLMS had received over 35,000 comments. Most of the comments received were copies of approximately 110 different form letters signed by individuals who said they were members or officers of unions and commented in general terms. Although many of these form letters expressed opposition to the Department's proposal to revise the forms, many other form letters expressed support for the proposal. In addition, approximately 1,200 unique comments, including lengthy, substantive and specific comments, were received from union members, local, intermediate, national and international labor organizations, employers and trade organizations, public interest groups, accountants, accounting firms, academicians, and Members of Congress. Some commenters addressed their comments to specific limited issues, others – most notably, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) – commented on virtually all aspects of the proposal. All comments have been carefully reviewed and considered. The Department's analysis of and responses to the comments are set forth below (see Sections II, III, and IV).

In addition, this rule makes minor changes to the forms and the Instructions that did not directly result from any comments. Many of these changes reflect the differences between the proposed and final rule, requiring the addition of lines to the forms, the re-labeling of others, and the combination of schedules. Many of the minor changes to the Instructions also reflect these differences. These differences are discussed in detail below in the Department's analysis of the comments. Many of the changes in the Instructions, however, simply correspond to changes in

the format of the form and the need to rework the Instructions so that they inform the filers and the public, whether they rely on the electronic or paper formats, about how to complete and use the forms. In analyzing the comments and preparing the final rule, some inadvertent omissions were discovered, as were some ambiguities in the text of the Instructions, requiring the redrafting of some of the Instructions and, in some instances, changes to the form. In reviewing the schedules for reporting disbursements to officers and employees, it became apparent that a filer would benefit from seeing the names of the schedules from which information was to be obtained, and therefore line I in each schedule was revised to include the names of the five schedules.

The Department's review revealed some inadvertent omissions from the proposed Form LM-2. For example, in Schedule 12, lines 7 and 8 were omitted. The final form includes these lines. Line 7 will provide space for "totals from continuation pages (if any)," and line 8 will be used to report the "total of lines 1-7." In Item 30, "Schedule 8" was omitted from the "Form Schedule Number" column. This omission has been corrected. The language of the attestation has been changed slightly to ensure that it complies substantially with 28 U.S.C. 1746.

In several other places, additional lines were added in order to reflect changes in the Instructions, including the need for additional lines to reflect subtotals of itemized and aggregated amounts for some categories or the need to add amounts from other parts of the form. Several titles of categories were revised to better reflect the information to be reported. Thus, the title of Item 36, "Dues and Other Payments," has been changed to "Dues and Agency Fees," the title of Schedule 1 was changed to "Accounts Receivable Aging Schedule," and the title of Schedule 8 was

changed to "Accounts Payable Aging Schedule." In Schedule 9, "Loans Payable," the Instructions were revised to state that interest paid must be reported in Schedule 18, "General Overhead," in place of the reference to the now obsolete "Other Disbursements Schedule."

The text of the Instructions pertaining to some schedules and categories was revised where greater clarity was needed. Additional examples were included to assist filers in completing certain categories. For example, in Section X, a building corporation was added as an example of types of trusts, and new examples for "Other Receipts" were provided to better reflect the transactions to be reported on the schedule. Additional explanation for the "Detailed Summary Page" and the "Initial Itemization Page" was added. The "Continuation Itemization Page" was created for labor organizations that utilize the hardship exemption and do not file electronically. Some terms that might be unfamiliar to filers were explained, including terms such as "net," "basis," and "book value." In Items 39 and 60, the following were added to illustrate items to be reported as supplies: union logo clothing, lapel pins, and bumper stickers.

Additional information about compliance assistance also was added. In the "How to File" section, filers are provided a website address for obtaining the filing software www.olms.dol.gov; the reference in the proposed instructions to a CD-ROM accompanying the report package was deleted as obsolete. Updated information is provided in the "If You Need Assistance" section at the end of the instructions. In Item 18, "Changes in Constitution and Bylaws or Practices and Procedures," the language was revised to indicate that if the form is filed electronically, the constitution and bylaws must be submitted as an electronic attachment. In the second paragraph of the general instructions for completing Schedules 14 through 22, the

statement relating to the compatibility of the Department's software was revised to reflect that the software will be compatible with the most commonly used electronic recordkeeping systems. A sentence was also added to indicate that information about the software and the technical specifications can be found at the OLMS website.

II. Comments on the Proposal and Responses to the Comments

A. General Comments

Before discussing the many specific comments that the Department received, it should be noted that the Department also received many comments that simply expressed general support for, or opposition to, the proposal. Union members, employers, and public interest organizations filed numerous general comments in support of the Department's proposed reform. One union member asked, "Government is accountable to taxpayers and corporations are accountable to shareholders, shouldn't unions be accountable to dues-paying members?" The commenters included a former vice president of a local union who expressed "full support of the proposed anti-corruption initiative" and wrote, "We should all know how the money is being spent at every level." Other union members suggested that the proposal was "long overdue."

Some union members advocated more sweeping change. One union member commented, "We need protection from our supposed labor leaders." Another commented, "Just please be sure the unions cannot get around these [proposed] requirements through creative accounting tricks." A

commenter who described himself as having been a union member for 33 years, wrote, "I do not believe that these new regulations go far enough to hold unions more accountable."

Some comments from union members centered on their difficulties in obtaining financial information from their union under the current reporting scheme. A shop steward said that repeated requests for information to the union leadership had "gone unanswered" and that he "feel[s] it is time that unions be required to account for every penny of the dues they collect." Numerous other commenters joined in describing futile, or largely futile, attempts made to obtain information about union finances from the union leadership. Some commenters indicated that such requests for information generate resentment or invite retaliation from union leaders. Another union member wrote, "You shouldn't have to beg or plead with your Business Manager/Agent to see financial reports for an organization you finance."

Other commenters claimed to have witnessed questionable union expenditures, which increased disclosure would have revealed. Another comment asserted, "Significant money is spent on items which many would consider a waste of funds if only the members knew." Others said that the greater detail in the proposed form "will make thefts harder to cover up." Another member supported the initiative to "help prevent fraud and corruption," as well as to permit "informed decisions about workplace issues." A public interest organization commented that "the information provided by the AFL-CIO in the Form LM-2 is not sufficient to give the average union member an accurate picture of how the AFL-CIO spends much of the dues collected." One commenter noted that requiring unions to estimate the amount of time spent by union officers and employees performing various duties will provide significant new information to

union members. The commenter also stated that, together with reporting receipts and disbursements by functional categories, the proposed rule will provide information that will help ensure that union leadership is acting in the interests of its membership. Another public interest organization commented that more "detailed financial reporting is needed" to avoid "waste, fraud and corruption." A 25-year union member stated, "It will be a great victory for [the union's] membership when the reform is passed."

Many commenters opposed the proposed changes, expressing their beliefs that the proposed rule is: political payback designed to punish organized labor; designed to weaken the union movement; intended to hamper the ability of unions to service their members; designed to strain union budgets; intended to expand the requirements of *Communication Workers of America v. Beck*, 487 U.S. 735 (1988); and intended to secure additional information for employers and anti-union organizations rather than union members. Although a number of unions and their members submitted helpful comments on the substance of the rule, some of the general comments in opposition simply criticized the Administration and Department officials, and lacked specific recommendations on the substance of the proposal. They nevertheless expressed strongly held feelings in opposition to the proposed changes.

Acknowledging that there are strong views on both sides of the issue, the Department has carefully considered all of the comments and the arguments made for and against the proposed revision of the forms used by labor organizations to report annual financial information as required by the LMRDA.

B. The Secretary's Statutory Authority

Some of the commenters questioned the Department's authority to make the proposed changes, arguing that the Department is upsetting the delicate balance between labor and management that was recognized by Congress in the National Labor Relations Act. Some unions complained that the proposal would require that labor organizations disclose confidential trade secrets, such as organizing strategy and negotiating plans, which some courts have ruled are not discoverable by union members and would give adversaries a greater knowledge of the inner workings of the labor organizations with which they may deal in connection with collective bargaining or organizing activities. These commenters argue that the Department's proposal is inconsistent with the principle that governmental intrusion into the affairs of labor organizations should be limited because the Constitution protects the right of association, there purportedly is no evidence that union members want this information, and, they alleged, other voluntary organizations are not subjected to this level of disclosure.

The Department takes seriously the concerns expressed that the proposed rule would intrude too deeply in the internal affairs of labor organizations and provide unfair advantages to the adversaries and competitors of such organizations. Accordingly, the Department has made numerous changes, described below, to avoid these unintended and unwanted results. In the Department's view, however, none of these changes is necessitated by any lack of authority on the part of the Department to revise the reporting forms or the manner in which reports must be filed. On the contrary, the LMRDA gives the Secretary of Labor authority to make such

changes, for the reasons outlined in the Notice of Proposed Rulemaking (NPRM) and in this rule. Section 201(b) of the LMRDA, 29 U.S.C. 431(b), requires that:

> Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information *in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year* . . .

(Emphasis added.) In addition, section 208 of the LMRDA, 29 U.S.C. 438, states in part:

> The Secretary shall have authority to issue, amend and rescind rules and regulations prescribing the form and publication of reports required to be filed under this title and such other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements.

These provisions make it clear that the Secretary has discretion to determine the format in which the information required by the statute must be provided, as well as the detail in which the information must be reported.

The statutory language describing the information that labor organizations are required to report is broad. Each labor organization must include in its annual financial report:

> (1) assets and liabilities at the beginning and end of the fiscal year;
>
> (2) receipts of any kind and the sources thereof;
>
> (3) salary, allowances and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who, during such fiscal year, received more than $10,000 in the aggregate from such labor organization and any other labor organization affiliated with it or with which it is affiliated, or which is affiliated with the same national or international labor organization;
>
> (4) direct and indirect loans made to any officer, employee, or member, which aggregated more than $250 during the fiscal year, together with a statement of the purposes, security, if any, and arrangements for repayment;
>
> (5) direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; and
>
> (6) other disbursements made by it including the purposes thereof;
>
> all in such categories as the Secretary may prescribe.

29 U.S.C. 431(b)(1)-(6). Comments that the Secretary lacks authority to require that receipts and disbursements be itemized or that disbursements be reported in categories are inconsistent with the plain language of the statute. In fact, the statute authorizes the Secretary to require labor organizations to report every receipt and disbursement, in any amount, and in any categories prescribed by the Secretary. The statute's requirement that labor organizations report "receipts" and "disbursements" does not, as some comments argue, call for only aggregated receipts and disbursements. Neither the fact that the Secretary has not heretofore exercised the full extent of her statutory authority nor the fact that forms previously required less detailed reporting diminishes the authority provided the Secretary by the LMRDA as enacted in 1959.

In the Department's view, this rule meets both the letter and the spirit of the LMRDA, both generally and with respect to its provisions specific to union reporting requirements. The rule promotes the two related overarching purposes of union reporting: to fully inform union members, on a yearly basis, about their union's "financial condition and operations," 29 U.S.C. 431(b); and, by public disclosure of this information, to deter union officials and employees from abusing their stewardship duties and to allow members, the Department, and the public an opportunity to review a union's financial information as a check on the actions of its officials and employees. *See United States v. Budzanoski*, 462 F.2d 443, 450 (3d Cir.), *cert. denied*, 409 U.S. 949 (1972); *Int'l Bhd. of Teamsters, et al. v. Wirtz*, 346 F.2d 827, 831 (D.C. Cir. 1965). The Department's reforms also advance the LMRDA's declared purpose "that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations." 29 U.S.C. 401(a).

The AFL-CIO commented that the proposed rule attempts to dictate to unions what they should treat as their "most . . . important purposes" in structuring their budgets and accounts and is contrary to the LMRDA insofar as the statute reflects the theory that, "[g]iven certain minimum standards, 'individual members are fully competent to regulate union affairs'" (*quoting* S. Rep. No. 85-1684, at 4-5 (1958)). In the view of the AFL-CIO, Congress deliberately established a two-step process, found in 29 U.S.C. 431, to inform members about their union's finances and operations. The process was established to protect unions from improper government intervention in their affairs and harassment from members that would divert them from their representational function. The first step requires the preparation of a financial report in such detail as needed to disclose the union's financial condition (29 U.S.C. 431(b)); the second step requires a union, upon a member's showing of just cause, to disclose additional information (29 U.S.C. 431(c)). In the AFL-CIO's view, the proposed rule collapses this two-part process and destroys protections for a union's confidentiality and trade secrets in violation of established protections.

In the Department's view, this argument is unpersuasive. The revised form calls for more detail than the previous form, but does not require disclosure of the underlying records necessary to verify the report. *See* 29 U.S.C. 431(c). The fact that the Secretary has exercised her authority to determine that more detailed financial information should be reported on a Form LM-2 than previously does not limit a union's ability to maintain additional information, in any format it desires, including the physical evidence of financial transactions (such as cancelled checks, bills, or receipts), nor does it eliminate each union member's right to examine such information, enforceable in district court upon a showing of "just cause." Congress conditioned a union

member's right to examine records necessary to verify the union's annual financial report on a showing of just cause in order to relieve unions from the harassment of repeated requests for documents based simply on curiosity. *See Kinslow v. American Postal Workers Union, Chicago Local*, 222 F.3d 269, 273 (7th Cir. 2000). This requirement, however, "simply entails a showing that the union member had some reasonable basis to question the accuracy of the LM-2 or the documents on which it was based, or that information in the LM-2 has inspired reasonable questions about the way union funds were handled." *Id*. at 274; *see also Mallick v. Int'l Bhd. of Elec. Workers*, 749 F.2d 771, 781 (D.C. Cir. 1984). No matter how much detail a union provides on its Form LM-2, members have a right to examine the actual documents or other evidence of recorded transactions to determine, for example, whether the union accurately recorded the information. Moreover, as explained more fully below, in Section III(B)(2), in response to comments from numerous unions that making certain information available to the public at large would be harmful to legitimate interests, the Department will permit labor organizations to report some receipts and disbursements as part of the aggregated total, without specificity, provided, with limited exceptions, it indicates on the Form LM-2 that it has done so. If a labor organization uses this option, only those of its members who satisfy the "just cause" standard and the Department will be entitled to review the specific information related to these disbursements. Far from eliminating the method Congress provided members to review their union's finances in more detail pursuant to section 201(c), 29 U.S.C. 431(c), that statutory tool is central to these reforms.

C. Comparison with Reporting Requirements for Corporations and Non-Profit Organizations

Several commenters, asserting that corporate scandals have surpassed any union misconduct in recent years, argued that corporations should first be made to file disclosure reports like those proposed by the Department before unions are asked to do so. Some union members argued that labor organizations are already subject to more stringent reporting requirements than corporations or other non-profit organizations. Many commenters felt that unions are like small businesses and should be provided the same protections from intrusive reporting requirements that, they assert, small businesses are provided by the Department and other regulatory agencies.

Other commenters noted that corporations and their executives are subject to significantly more burdensome reporting requirements than are unions. One commenter noted that labor organizations, unlike corporations, are not subject to various external controls and scrutiny by such entities as Wall Street investment analysts, portfolio managers, financial media, and millions of shareholders. Another commenter found the comparison between labor organizations and corporations irrelevant because unlike commercial entities, which are accountable based on their profit or loss, labor unions are accountable only in terms of the stewardship responsibilities of their officers. One commenter also noted that like corporate disclosure requirements, which have been amended periodically, union disclosure requirements should be changed in order to keep pace with the times. Another commenter estimated that the reporting and disclosure burdens on businesses are many times the burden on labor organizations.

The Department has concluded that, while there are important differences among corporations, public interest organizations, and labor organizations, increased transparency is as important for

labor organizations as for other such organizations. Moreover, for the reasons set forth below, the Department is not persuaded that the requirements imposed by this rule are more restrictive than those that apply to other entities. If anything, these requirements are less intrusive, less burdensome, and require less disclosure than reporting requirements governing other entities.

First, no comparison should be drawn between union reporting requirements and requirements imposed on a privately held enterprise where the operator of the business is also the source of much of the venture's financing. Legally mandated financial disclosure regimes for both unions and publicly held corporations are designed primarily to address a fundamental problem common to both institutions: that managerial control of an entity lies beyond the direct control of the people who fund the entity. *See generally* Henn & Alexander, *Hornbook on Laws of Corporations* §186 *et seq.* (1983). Corporate and union financial disclosure regimes are intended to reduce the informational advantages agents have over principals and permit principals to monitor and assess the performance of agents. *See* Fletcher, *Cyclopedia of the Law of Private Corporations §§2213 et seq., 6842-43* (perm. ed.), available on Westlaw at Fletcher-CYC. Adequate transparency encourages union officers and corporate directors (agents) who are elected by union members and corporate shareholders (principals) to conduct the business of their organizations in the best interests of the people who provide the operating funds. Agents failing to do so can be removed through the mechanisms of corporate and union democracy. *See Cyclopedia of the Law of Private Corporations §351 et seq.*

In a privately held enterprise, where the operator of the business is also the source of the venture's financing, there is no principal to perform the monitoring and no agent to be monitored.

See generally Laws of Corporations §257 *et seq.*; *see also* Soderquist, *Understanding the Securities Laws* §2:2.2 (2001), available on Westlaw at PLIREF-SECLAW. While privately held companies are required to make certain financial disclosures related to franchise taxes, Small Business Administration loans, Federal Communication Commission licenses and other regulatory schemes, these disclosures are designed to assess taxes, fees, or eligibility for government-provided benefits, not to ensure transparency of managerial performance. *See generally Cyclopedia of the Law of Private Corporations §6666 et seq.* The only scenario in which it is instructive to compare the financial disclosure regime of a privately held company to a union is when a privately held firm creates a principal/agent relationship by accepting funding through the venture capital markets. This scenario, however, also offers no basis for comparison with the relationship between a union and its members because financial institutions and other entities that provide such funding can condition it on the disclosure of any financial information concerning the company seeking funding, can demand that the information be provided in any level of detail desired, and can use contractual remedies to enforce the condition. Union members, by contrast, are entitled only to the report that their union files with the Department of Labor pursuant to the LMRDA and, upon a showing of just cause, "to examine any books, records, and accounts necessary to verify such report." 29 U.S.C. 431(b), (c).

Accordingly, the only reporting requirements applied to businesses that are relevant for comparison with the annual union financial report are those applied to publicly-traded companies. Generally speaking, the regulatory regime governing financial reporting by large and small public companies is much more extensive than the system that exists for labor organizations. *See generally* Hazen, *Law of Securities Regulation* §§3.2-3.7, 9.4 (2002),

available on Westlaw at LAWSECREG; *Understanding the Securities Laws* §2:2.2. Furthermore, the reporting requirements under the securities laws have been substantially increased since the enactment of the Sarbanes-Oxley Act, Pub. L. 107-204, 116 Stat. 745. *See generally* 68 FR 36636-01 *et seq.* (June 18, 2003) (amending various disclosure rules established by the Securities and Exchange Commission ("SEC"), including 17 CFR 240.13a-14, 240.13a-15, 240.15d-14, 240.15d-15, 249.220f). Labor organizations must file only one form a year, need not disclose qualitative information, and are not required to conduct certified audits of their financial statements. *See* 29 U.S.C. 431. The financial reporting scheme for public companies, as amended by the Sarbanes-Oxley Act, requires the disclosure of both quantitative and qualitative information and imposes strict audits and significant internal controls on public companies, their officers, directors, auditors, accountants and attorneys. *See generally* 17 CFR Parts 210-211, 228-32, 239, 241, 249 (Subparts A-D) (2003) (particularly provisions amended by 68 FR 4820 (Jan. 30, 2003), 68 FR 5110 (Jan. 31, 2003), 68 FR 15354-02 (Mar. 31, 2003), 68 FR 36636-01 (June 18, 2003). *See also* Bloomenthal, *Sarbanes-Oxley Act in Perspective* §10 (2002), available on Westlaw at SEC-SOAP S 10. Small and large public companies are required to file annual and quarterly reports. *See* 17 CFR 240.13a-1 *et seq.*; *Cyclopedia of the Law of Private Corporations §6842; Law of Securities Regulation* §9.6[4]. All public companies must certify audits for the accuracy of information in their annual and quarterly reports. *See* 68 FR 36636 et seq. (discussed above); Bloomenthal & Wolff, *Securities and Federal Corporate Law* §7:35.13 (2002). A substantial amount of quantitative financial information is contained in both annual and quarterly reports. These reports must disclose "material" financial information. *See Law of Securities Regulation* §§3.2-3.7, 9.4; *Understanding the Securities Laws* §12-8; *Cyclopedia of the Law of Private Corporations* §6862. In its Statement of Financial Accounting

Concepts No. 2 (SFAC No. 2), the Financial Accounting Standards Board (FASB) stated the essence of the concept of materiality as follows:

> The omission or misstatement of an item in a financial report is material if, in the light of surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item.

Id. at ¶ 132. See discussion below in Section (II)(D). Due to the myriad factors involved in determining whether financial information meets this rather vague threshold, professional assistance is required. *See id.* at ¶¶ 123-132. As noted above, the SEC generally requires public companies to disclose in their annual reports "material" quantitative information on balance sheets or income statements related to numerous types of assets, accounts, and expenditures. *See Law of Securities Regulation* §§3.2-3.7, 9.4. Public companies must disclose "material" financial data on executive compensation, including: annual salary; bonuses; other annual compensation; restricted stock; and options. *Id.* They must also provide "material" quantitative information on computation of per share earnings and market risk. *Id.* The Sarbanes-Oxley Act added several additional categories of material, quantitative data that public companies must disclose, including disclosing in each annual and quarterly report all "material" off-balance sheet transactions, arrangements and obligations (including contingent obligations). *See* Title III, 116 Stat. 775, and Title IV, 116 Stat. 785.

Since its inception, the LM-2 reporting system has eschewed the use of a vague standard based on individualized judgments regarding materiality for determining what quantitative data a union must report, and has instead required specific information regarding all assets, liabilities and transactions. The Department has determined that it will continue with this approach. This avoids forcing labor organizations to incur the expenses and burdens associated with making determinations about whether given items are "material." Even those commenters that suggested that the Department should consider implementing a materiality standard recognized that such a standard would introduce an element of judgment in the reporting process with potential for complicating the investigative process. Although as commenter argued that such tradeoffs are similar to those necessitated by dollar thresholds for reporting, the Department believes that a dollar threshold is easier for reporting unions to apply, for the Department to enforce, and for union members to understand.

In addition to the detailed quantitative data, the annual and quarterly reports of large and small public companies must also disclose "material" qualitative data. *See Law of Securities Regulation* §§3.4, 3.6, 9.4. This includes narrative descriptions of "material" aspects of a company's businesses and principal products. *Id.* Public companies must also disclose information on relationships the company has that may have a "material" effect on current or future financial condition, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses of the company. *Id.* This includes an explanation of a company's dependence on customers whose loss would materially affect the company's financial health and an explanation of material changes in the mode of conducting business. *Id.* "Material" legal proceedings must be reported, including full identification of parties and the

circumstances and basis of the proceedings. *Id.* "Material" property holdings must also be identified and described, including their use and any encumbrances upon them. *Id.*

Public companies are also required to make forward-looking statements about the future financial performance of the company, including analysis of all "material" risks facing the company. *Id.* Public companies must also report "material" information about market risk, such as potential loss in future earnings of cash flow based on changes in interest rates, foreign currency exchange rates, commodity prices and other relevant market factors. *Id.* A detailed explanation of internal controls and procedures must also be provided. *Id*; *see also* 68 FR 36636-01. The Department has decided not to require labor organizations to provide their members with any qualitative information on its finances, much less the detailed qualitative analysis public companies are required to disclose.

Following the passage of Sarbanes-Oxley, the SEC and the Public Company Accounting Oversight Board ("the Board") oversee the audits of public companies; establish accounting and audit report standards and rules for public companies; and certify, investigate, inspect, and enforce compliance with standards applicable to professionals involved in the preparation of audits and financial reports by public companies. *See* Title I, 116 Stat. 750. Annual audits and financial reporting by public companies must be under the control of an audit committee composed exclusively of independent directors. *See* Title II, §202, 116 Stat. 772-73; Title III, 116 Stat. 775-77. These independent committees must include at least one "financial expert" and are directly responsible for the appointment, compensation, and oversight of the certified firms that do private audits of public companies. *See* Title IV, §408, 116 Stat. 790-91. To effectuate

the whistleblower provisions of the Sarbanes-Oxley Act, these audit committees must also establish procedures for the receipt, retention and review of anonymous complaints by a public company's employees regarding accounting practices, internal financial controls, and auditing matters. *See* Title III, §§301-04, 116 Stat. 775-78. Public companies must give their audit committees the financial resources necessary to hire any independent advisors or attorneys required to carry out these responsibilities. *Id.*

The LMRDA does not require labor unions to perform any audits. It does not mandate that unions use governance structures that ensure independent oversight of financial operations, such as independent audit committees. Union members have no whistleblower rights. The Department does not enforce any independent system of certification, quality control, ethics, independence standards or other regulation of firms that some unions use to prepare annual Form LM-2 reports. There are also no restrictions on other services that a firm preparing Form LM-2 reports may perform for a labor organization. In contrast to the reviews the SEC performs on public companies not less than once every three years (*see* 15 U.S.C. 7266(c)), labor unions currently can expect, on average, to be audited by the Department of Labor approximately once every 150 years. Ten of the 25 largest unions have never been audited because of OLMS's limited resources.

Several commenters suggested that unions be required to file annual independent audits. Many unions, one individual commented, have constitutional provisions that already require an audit by an outside accounting firm. While some commenters argued that requiring unions to obtain annual audits is within the Department's statutory authority, no provision of the LMRDA vests

the Secretary of Labor with any express authority to require unions to obtain audits and the Department has chosen not to attempt to impose such a requirement, to avoid imposing on the labor organizations that are not currently obtaining private audits any need to hire financial experts to conduct a qualitative analysis of the union's records. Simply permitting those unions that currently obtain annual audits to file whatever audit is currently performed is not likely to ensure that all of the statutorily-required information is reported, nor would it ensure that the information is provided in a standard format that is both readily understandable and accessible to union members. Information that may be meaningful to trained financial analysts or auditors may not be useful to many union members.

Accordingly, the statutory requirements, and the Secretary's longstanding implementation of those requirements, have been framed in terms of assets, liabilities, disbursements and receipts, rather than more general financial terms. The Department has concluded that continuing to require unions to report holdings and transactions, rather than third-party descriptions of their financial conditions, will provide understandable information to members, permit members to compare reports of different years, permit members to compare reports with those of other unions, and enhance the detection and deterrence of fraud.

Alternatively, commenters suggested, the Department should annually conduct a compliance audit of each union. The Department's responsibility for insuring the financial integrity of unions involves both requiring adequate reporting and conducting compliance audits. The statute does not contemplate the two components as mutually exclusive; in fact, the Department intends to increase the number of compliance audits, as resources permit, at the same time it

implements the revised Form LM-2. Additional compliance audits would not, however, constitute a satisfactory alternative to the reforms embodied in the revised Form LM-2, as compliance audits would address the accuracy of the information provided in the existing Form LM-2, but would not improve the transparency of labor organizations' finances, increase the information available to members, or make the data disclosed in reports more understandable and accessible.

As one commenter noted, it is even more difficult to deter financial mismanagement by labor organization officials than it is in a corporate setting because of the absence of natural market influences and because there are fewer regularly occurring checks on the financial performance of unions. The same commenter noted that the additional disclosure as a result of the proposed changes would make it more difficult, and more expensive, to hide fraud. Recognizing that achieving this goal will also make it more expensive for unions to report, and that disclosure alone will reduce but not entirely overcome fraud, the Department has attempted to achieve a balance in this rule between the benefits and burdens of more detailed disclosure, and intends to follow promulgation of the rule both with more effective enforcement, using the additional information disclosed to uncover fraud when it occurs, and with more compliance assistance to respond to questions and concerns.

The Department is also not persuaded by the comments that suggest that the reporting requirements for labor organizations should be comparable to those that govern non-profit organizations. The LMRDA was enacted in the aftermath of a congressional investigation in the 1950's that found corruption in union leadership and a disregard for the rights of the rank-and-

file. *See Wirtz v. Hotel, Motel & Club Emp. Union, Local 6*, 391 U.S. 492, 497-98 (1968). The over-riding purpose of the reporting provisions of the LMRDA is to provide union members with "all the vital information necessary for them to take effective action in regulating affairs of their organization." *See* S. Rep. 187, 86th Cong., 1st Session, p.9, 1959 U.S.C.C.A.N. 2318, 2325 (1959). The Senate Labor Committee declared: "A union treasury should not be managed as the private property of union officers, however well intentioned, but as a fund governed by fiduciary standards appropriate to this type of organization. The members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property." *See* S. Rep. 187 at p., 1959 U.S.C.C.A.N. at 2324. In light of these congressional directives, the Department is not persuaded as a general matter that a comparison between labor organizations and ordinary non-profit organizations is apt in the context of determining reporting standards. Nevertheless, although other reporting standards will not be treated as benchmarks or models, the Department has considered the specific comments of labor organizations and others in assessing the appropriateness of each proposed change to the reporting forms, as discussed in the succeeding sections.

D. Application of Generally Accepted Accounting Principles

Some commenters argued that the changes proposed by the Department depart from the generally accepted accounting principles (GAAP) promulgated by the FASB and the American Institute of Certified Public Accountants (AICPA). In particular, this position was advanced by a professor of accountancy whose comments were made on behalf of, and attached to the comment of, the AFL-CIO. This commenter said that many of the terms used and information required by

the Department's proposal are inconsistent with various interpretations of GAAP. These assertions fail to recognize, however, that not all GAAP standards are consistent with the disclosure requirement of the LMRDA. 29 U.S.C. 431(b). Although the Department has considered the GAAP standards, and has accepted them in principle where they further the purposes of the LMRDA, the Department will not adopt GAAP standards when they are not consistent with these purposes. For example, as many commenters noted, the current Form LM-2 mandates reporting on a cash accounting basis, which is inconsistent with GAAP, but some cash accounting procedures are made necessary by the statute's requirement that the union's disclose "receipts" and "disbursements." *See* 29 U.S.C. 431(b). Further, Form LM-2 is a special-purpose financial report prepared for compliance with the LMRDA. Special financial reports to government regulatory bodies are generally prepared in conformity with Other Comprehensive Basis Of Accounting (OCBOA).

This commenter also argued that the Department's proposal calls for the presentation of disaggregated information, which is contrary to GAAP and confusing for the user of the reported information. Although GAAP precepts do not control the inquiry, the revised Form LM-2, like the current Form LM-2, includes Statements A and B, which provide aggregated totals of financial information. Form LM-2 users do not have to rely solely on the itemized information contained in the schedules to obtain an overall understanding of the reporting labor organization's financial performance. The Department proposed requiring labor organizations to provide certain itemized information in addition to the aggregated totals in order to provide users of the Form LM-2 with additional financial information on specific financial issues. In fact, the FASB recognizes the appropriate inclusion of disaggregated information in financial reporting:

> Disaggregated information that permits users of financial information to relate components of revenues to components of expenses also is often preferable to information provided by their aggregated amounts.

Financial Accounting Standard 117 (FAS 117), ¶ 118.

Several commenters asserted that the individual items reported on the Form LM-2 supporting schedules in and of themselves are not material financial information that will be relevant to the user. The FASB states that materiality of information is not measured solely on its magnitude. SFAC No. 2. "Materiality is a pervasive concept that relates to the qualitative characteristics, especially relevance and reliability." *Id.* The Supreme Court, in deciding whether an omitted fact was material, described a general standard of materiality as:

> a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.

TSC Industries Inc. v. Northway Inc., 426 U.S. 438, 449 (1976). The FASB agrees that the "usefulness of information must be evaluated in relation to the purposes to be served, and the objectives of financial reporting are focused on the use of accounting information in decision making." *Id.* The Department has concluded, based on the experience of its investigators and the comments received from many union members, that the information that will be reported as a result of this revision of the Form LM-2, in fact, will have the capacity to make a difference in the ability of union members to make decisions regarding workplace and union governance issues. As indicated in Section III(B)(3), (4), the proper threshold for when a union must itemize and separately report a receipt or expenditure is subject to competing arguments. Setting the threshold lower (or eliminating it entirely) increases the number of receipts and expenditures that must be reported, which correspondingly increases the information available for inspection. The availability of this information makes concealment of fraud more difficult, and allows members to evaluate the wisdom of the union's financial transactions. The threshold is significant: union members ordinarily protect their rights by reviewing these reports, unlike investors in public corporations and other individuals protected by the audit, oversight, and whistleblower provisions discussed in Section II(C). While a strong argument could be made that all expenditures are thus significant and should be itemized, a lower threshold would increase the accounting burden. The $5,000 threshold adopted strikes a balance between the opposing viewpoints. Thus, while the revised form neither permits nor necessitates individual assessments of the materiality of information about particular transactions, it requires the disclosure of information that is significant to union members.

Commenters also argued that proposed Form LM-2 violates GAAP because the costs of reporting the information exceed the benefits to users of the information. While the costs of the revised Form LM-2 are addressed in more detail in the Regulatory Flexibility and Paperwork Reduction Act Analyses, *see* Section V, the Department has determined that these costs are outweighed by benefits. FASB and other government regulatory bodies have discovered that the total benefits derived from shared information are nearly impossible to quantify. Information is different from other commodities because the benefits from information can extend beyond the immediate users. The revised Form LM-2 directly benefits union members because increased disclosure permits members to make better decisions about union governance and helps deter and detect fraud. The public also benefits from the deterrence of fraud, due to the costs fraud imposes on, for example, the criminal justice system, and from the promotion of ethical conduct in the administration of labor organization affairs, which increases the stability of labor organizations, and thus promotes the flow of commerce. *See* 29 U.S.C. 401 ("Declaration of Findings, Purposes, and Policy"). The information required on the revised Form LM-2 thus benefits a wide variety of users, which is consistent with SFAC No. 2, ¶ 143.

Commenters noted several issues related to the application of FAS 117, Financial Statements of Not-For-Profit Organizations, to labor organization financial reporting. The FASB has opined regarding the appropriate scope of financial statements for not-for-profit organizations:

> A complete set of financial statements of a not-for-profit organization shall include a statement of financial position as of the end of the reporting period, a statement of activities and a

> statement of cash flows for the reporting period, and
>
> accompanying notes to financial statements. FAS 117, ¶ 6.

FAS 117, however, applies only broad, general standards for reporting information in not-for-profit organization financial statements (FAS 117, ¶ 48), and the FASB recognizes that general purpose financial statements may not fulfill the special-purpose needs of regulatory requirements like those imposed by the LMRDA (FAS 117, ¶ 45). Even not-for-profit organizations subject to FAS 17 are required to report expenses by functional categories and to allocate costs among significant programs as applicable (s*ee* FAS 117, ¶ ¶ 26-28) because of differences in indicators of performance as compared to for-profit business organizations (FAS 117, ¶ 61).

Comments on the Department's proposal indicate some confusion regarding the question whether revisions to Form LM-2 will require labor organizations to maintain their financial records using a cash basis or accrual method. Some unions and individuals have read the proposed rules to require unions to maintain their financial records system on an accrual basis. In this regard, some of the commenters noted that Schedule 1 of the proposed Form LM-2 requires reporting of receivables, a concept associated with accrual accounting. Some of the commenters also expressed their view that the majority of unions use the cash method of accounting and that it would be a substantial burden for them to make the conversion to the accrual method. Some of the commenters also noted that cash basis reporting comports with IRS requirements.

A local union explained that its accounting system uses the cash basis method. It noted that the proposed Schedule 1 (Accounts Receivable) and Schedule 8 (Accounts Payable) call for

information maintained by systems set up on the accrual method of accounting. The local explained that this information is not readily available from cash basis systems, noting that commercial accounting systems track income and expenses, not receipts and disbursements. The local expressed its concern that it would be able to provide the accounts receivable and accounts payable information only by undertaking manual searches through voluminous records. It also noted a specific concern regarding the reporting of membership information, noting that its system to track membership is not integrated with its general ledger, with the result that it has no general ledger account set up to capture written off or uncollected dues income. Similarly, one labor organization noted concerns with regard to reporting accounts receivable and accounts payable (insofar as they require "aging" information). The commenter explained that this change would require it to spend considerable additional time to properly complete a Form LM-2. It explained that many local unions have members' dues sent to third parties or their particular international and that the locals' portion of the dues is only later remitted to the locals. One commenter stated that the cash basis method better effectuates the LMRDA's focus on receipts and disbursements.

Some commenters, however, read the proposed rules as continuing the cash basis requirement. In their comments, they requested that the Department, as part of the final rule, allow unions the option to utilize the accrual method of accounting. In support of this approach, they noted that accrual accounting is required by GAAP, reflecting, in their view, the belief that accrual accounting provides a more effective gauge of an organization's financial condition. In this regard, one commenter noted that the Department itself once recognized, when it proposed revisions to the Form LM-2 in 1992 (later withdrawn in part), that "accrual accounting generally

provides a more accurate indication of an organization's financial condition and operations." 57 FR 49282 (Oct. 30, 1992). Other commenters noted that the current cash basis requirement forces them to convert information in their accrual-based system for the sole purpose of submitting a Form LM-2, an expensive and time-consuming undertaking. One labor organization noted that its accounting personnel last year spent nearly half of the 1,200 hours it spent in preparing the Form LM-2 in converting information from its accrual-based system to a cash basis mode. Several commenters also noted that the IRS accepts reports using the accrual method of accounting.

An international labor organization, the Air Line Pilots Association (ALPA), explained that it uses an accrual system to collect detailed information for its payroll, employee expense reports, member accounts receivable, and flight pay loss. ALPA noted that the current requirement that unions employ the cash method in preparing a Form LM-2 requires time-consuming conversion of ALPA's financial information, preventing it from ever meeting the March 31 deadline imposed by the LMRDA. Another international, the International Brotherhood of Electrical Workers (IBEW), stated that it maintains its books on an accrual basis for two reasons: first, it enables the organization to match revenue and expenses to the proper time period; and second, it enables the organization to comply with accounting rules and to receive an "unqualified" opinion from an independent auditor as to the organization's financial health.

In the Department's 1992 rulemaking, the Department specifically proposed that unions would be required to utilize the accrual accounting method. In response to the comments submitted, however, the 1992 final rule allowed unions the option to utilize either the cash or accrual

method of accounting in reporting their finances. This option was rescinded in December 1993. This action was taken in response to comments that only relatively few of the larger unions used the accrual method and to correct the mistaken perception held by some unions that the Department's rule, in practice, was encouraging unions to utilize accrual accounting, a departure from the cash basis method that had been prescribed for reports in the past and the method used by the vast majority of unions. One union commenter on the current rule, however, asserted that the option concept was well thought-out because it recognized that although some unions used the accrual method of accounting, imposing this method on many smaller unions would present a real hardship to these unions because they rely on volunteers, not accountants, to prepare the Form LM-2. As discussed immediately below, this option is indeed available to unions, which may choose to track their finances on a cash basis, accrual basis or some other method of accounting.

Since the 1992 rule was rescinded, the Form LM-2 has, in fact, required that receipts and disbursements be reported on a cash basis, but has also required the reporting of certain information more typically maintained in an accrual-based system (e.g., Schedule 1 – Loans Receivable, Schedule 8 – Loans Payable, Accounts Payable, Mortgages Payable). Thus, requiring a combination of both types of information in one form, which might be characterized as modified cash basis accounting, represents no change from the existing Form LM-2 and was not identified as a change in the NPRM. The statement in the Instructions to the existing Form LM-2 that the form "must be prepared using the cash method of accounting," was dropped, however, as it was not wholly accurate and could be misleading.

As explained in greater detail below, the Department has not proposed to require unions to establish a particular method to account for, and manage, their finances. Unions, for various reasons, may choose to track their finances on a cash basis, accrual basis, a hybrid of the two, or some other method of accounting. As noted by some commenters, the Form LM-2 reporting format requires unions to utilize some elements of both cash basis and accrual accounting. To a large extent, however, that format is driven by the fact that the statute itself requires both types of information. For example, the statement of "receipts and disbursements" required by the LMRDA is basically an accounting of the inflow and outflow of an organization's cash during the fiscal period. Consequently, a "profit and loss" statement prepared on the accrual basis is unacceptable as compliance with the Act since it reflects the income and expenses of an organization in the fiscal period and not the disposition of its cash. *See* 29 U.S.C. 431(b).

In contrast, the statement of "assets and liabilities" required by the LMRDA is essentially an accrual type of statement and provides for reporting all receivables, payables, accruals and deferred items. Consequently, it should be unnecessary for an organization that maintains its records on the accrual system of accounting to change its procedures in order to prepare the statement of assets and liabilities. Preparation of a "cash receipts and disbursement" statement when the accrual method of accounting is used normally requires only an analysis of the organization's cash receipts and disbursements records in order to properly reclassify the necessary cash transactions to conform to the types of accounting classifications represented by like items on the prescribed forms. More importantly, the necessary modifications to either a cash based or accrual based system that may be necessary to comply with the format of the

revised Form LM-2 are no different than modifications that labor organizations currently perform to file the existing Form LM-2.

The Department believes it would be inappropriate to dictate the particular system by which a union keeps track of its finances. While some unions may find it easier to use the accrual method of accounting and convert information to complete Form LM-2 items reporting the inflow and outflow of funds, the reporting goals can be achieved without directing all unions to use accrual accounting as the foundation of their financial management systems. Such a mandate is unnecessary and has been rejected in light of the comments that most unions maintain their books on the cash basis. Nor is the Department persuaded that accrual accounting should be mandated because it accords with GAAP. As discussed above, GAAP practices are neither binding nor necessarily appropriate for all aspects of financial reporting, particularly insofar as the operations of not-for-profit entities are concerned. The Department's concern is in ensuring the disclosure of information that satisfies the statutory requirements of the LMRDA in a manner best suited to meet the purposes of the statute, which can be accomplished without requiring a labor organization to use an accounting method that may not be best suited to its overall needs.

E. Additional Reforms Considered

Several commenters suggested that the Department should undertake other reforms, in addition to those proposed. While some comments expressed general support for wide dissemination of information filed with the Department of Labor on the labor organization annual financial reports, others thought that more specific dissemination requirements should be imposed. One

commenter suggested that unions be required to post their most recent labor organization annual financial report on union bulletin boards in union halls and on employer bulletin boards reserved for union use in employer workplaces, while another suggested that labor organizations should make their annual financial reports available at their membership meetings. One comment suggested that information reported on the labor organization annual financial reports should be sent by unions to their members by mail or included in newsletters, as well as be made available on the Internet. Finally, one comment urged the Department to implement the provisions of section 105 of the LMRDA, requiring "[e]very labor organization [to] inform its members concerning the provisions of this Act." *See* 29 U.S.C. 415.

Section 205 of the LMRDA provides that the reports filed with the Department under Title II of the Act "shall be public information" and permits the Secretary of Labor to publish any information obtained. *See* 29 U.S.C. 435. Section 208 gives the Secretary of Labor authority to issue rules and regulations prescribing the form and publication of reports required to be filed under Title II. *See* 29 U.S.C. 438. Neither sections 205 and 208 nor any other provision of the Act expressly vest the Secretary of Labor with any authority to require labor organizations to disseminate information filed with the Department of Labor on labor organization annual financial reports at membership meetings, on labor organization websites, in labor organization newsletters or otherwise by mail to the members, or on union or employer bulletin boards. Neither the terms of section 105, nor of any other provision of the LMRDA, vest the Secretary of Labor with any express authority to enforce section 105. *See* 29 U.S.C. 415.

The Department, however, has developed and implemented, with direction from Congress to do

so, an extensive system for making available on the Internet the labor organization annual financial reports filed with the Department for the years 2000 and thereafter, as well as reports filed under section 203 of the LMRDA by labor relations consultants who engage in persuader activity and the employers who enter into agreements for such services. *See* 29 U.S.C. 433. Using this system, any member of a labor organization or the general public with Internet access can review all such reports (at http://union-reports.dol.gov) except those for the approximately 600 very small labor organizations whose national organizations file summary reports on their behalf pursuant to 29 CFR 403.4(b) because those small unions had no assets, liabilities, receipts, or disbursements during the reporting period.

III. Responses to Comments on Proposed Changes to Form LM-2

A. Which Labor Organizations Must File a Form LM-2

1. The Filing Threshold

Since 1994, only labor organizations with $200,000 or more in annual receipts have been required to file a Form LM-2; smaller unions are permitted to use the simpler Forms LM-3 or LM-4. Although the Department considered raising the threshold for filing a Form LM-2 in its 2002 NPRM, thus reducing the number of labor organizations affected by most of the changes proposed, it did not propose an increase. The Department did solicit comments, however, on the appropriate level of annual receipts to trigger a Form LM-2 obligation. Some commenters expressed the view that the current threshold is too high and some argued that all unions should

be required to file the expanded form, without regard to the amount of their annual receipts. Other commenters argued that the current threshold is too low and should be raised.

Shortly after the LMRDA was enacted in 1959, the threshold for filing the more detailed Form LM-2 was set by the Secretary at $20,000. The threshold was raised by the Secretary in 1962 to $30,000 and again in 1981 to $100,000. If any of these levels were now adjusted for inflation, the amount would be less than the current threshold of $200,000. Nevertheless, the Department has decided to raise the threshold to $250,000, an amount that approximates an inflation adjustment of the current threshold. Although the overwhelming majority (79%) of all reporting labor organizations are currently exempt from filing Form LM-2, changing the threshold to $250,000 will reduce the recordkeeping and reporting burden for approximately 500 labor organizations. The Department will continue its past practice of periodically assessing the appropriateness of the filing threshold to ensure that it is relevant in terms of the current economy.

A number of labor organizations commented that the Department should permit unions to "pass through" funds received during the reporting period like per capita fees collected by local unions for transmission to a national or international labor organization and/or to use net dollar figures in order to avoid meeting the filing threshold. This concern should be alleviated somewhat by increasing the filing threshold to $250,000 but, more importantly, the Department does not agree that the concern is valid. Labor organizations should be accountable for all funds received and in their custody or control during the reporting period. Members who pay dues and per capita fees to their locals have a right to know what action their local took with respect to those funds.

Similarly, members have a right to know how much money came into their union during the year, not just the net amount left at year's end.

Several commenters, including the AFL-CIO, cited the situation where a small labor organization with a history of filing either Form LM-3 or LM-4, *i.e.*, one with annual receipts below $200,000, by virtue of an unusual event during the year had receipts boosted to in excess of $200,000. For example, a small union with consistent annual receipts of $50,000 sells a surplus piece of real estate for $200,000, resulting in annual receipts for that year of $250,000. Under current practice, the union would be required to file Form LM-2, and under the new rule it would also meet the Form LM-2 filing level.

In this example, by virtue of a one-time-only event, annual receipts would be quintupled. This union would likely not keep records conducive to providing the kind of details required by Form LM-2 – and particularly the details and new schedules envisioned in the revised Form LM-2. In addition, labor organizations with such small annual receipts would be less likely to have electronic recordkeeping than their larger counterparts.

In this situation, if a labor organization lacks the capability of filing electronically, it could invoke the continuing hardship exemption, and thereby be excused from filing electronically for that year. The Department has concluded that providing any other relief is unnecessary and could undermine the purpose of these reforms in situations where transparency and full disclosure are most important. First, union members are likely to be especially interested in how "windfall" funds are handled. Second, if a union's annual receipts meet the filing threshold only

because of a one-time event, the union is unlikely to have many other transactions within the reporting period and fewer subject to the disclosure thresholds of the final rule. The union therefore will not face substantial burdens in collecting the information necessary to file a Form LM-2, even though it has not been required to keep track of this information in the past. There is no sound reason to permit a union that has $250,000 in annual receipts to avoid the reporting obligation imposed on all other unions with similar receipts simply because the union has not had similar receipts in other years.

2. Intermediate Unions Without Private Employee Members

Three labor organizations – the National Education Association (NEA), the American Federation of Teachers (AFT), and the AFL-CIO – and one individual union member submitted comments on the Department's proposal to adopt the holding of the U.S. Court of Appeals for the Ninth Circuit in *Chao v. Bremerton Metal Trades Council, AFL-CIO*, 294 F.3d 1114 (2002), interpreting section 3(j) of the LMRDA. In that case, the court of appeals ruled that an intermediate labor organization that has no dealings itself with private employers and no members who are employed in the private sector may nevertheless be a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA if the intermediate body is "subordinate to a national or international labor organization which includes a labor organization engaged in commerce." The Department proposed to follow this holding by adding language to the instructions for Forms LM-2, LM-3, and LM-4 clarifying that any "conference, general committee, joint or system board, or joint council" that is subordinate to a national or international labor organization will be required to file an annual financial report if

the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA.

The three union commenters objected to the application of the LMRDA to wholly public sector intermediate bodies pursuant to *Bremerton* as contrary to the statutory language, established case law, and Department of Labor regulations at 29 CFR 451.3(a)(4). Additionally, the NEA and AFT opposed the extension of the LMRDA to wholly public sector bodies through the regulatory process and commented that such an extension should require Congressional action. They further commented that the decision in *Bremerton* does not bring wholly public sector intermediate bodies within LMRDA coverage, and any reference to *Bremerton* should, therefore, be taken out of the new rules where such reference is used to attempt coverage of wholly public sector organizations.

The expanded language in the instructions merely incorporates and restates the language of section 3(j) of the statute. The reference to the *Bremerton* decision clarifies that the Department intends to interpret this language in a manner consistent with that decision. *Bremerton* is the most recent court decision interpreting section 3(j). The Department recognizes that the interpretation of section 3(j) set forth in *Bremerton* represents a departure from previous court decisions and the Department's prior administration of the Act. However, the Department has concluded that the *Bremerton* court's interpretation is the correct reading of the statutory language. Further, neither the Department nor the court has added statutory language or otherwise encroached on Congressional prerogatives here. The court, pursuant to its constitutional authority, interpreted terms contained in the statute, and the Department, operating

within its authority to administer the statute, has stated its intention to adopt that interpretation. The stated intent of Congress was to exempt "wholly public sector" labor organizations from the coverage of the Act. The *Bremerton* court found that an intermediate labor organization is not "wholly public sector" and exempt from the Act where it is subordinate to a parent organization that meets the definition of a labor organization engaged in an industry affecting commerce. The Department's regulation at 29 CFR 451.3(a)(4) is not contrary to the *Bremerton* decision when the regulation is read as giving effect to the court's interpretation of the term "wholly public sector labor organization." The Department concludes that none of the commenters provides a persuasive argument for disagreeing with the *Bremerton* court's reading of the statute and therefore will maintain the expanded language in the instructions for the Form LM-2. The expanded language adopting the *Bremerton* court's construction of the statute will also be added to the instructions for Forms LM-3 and LM-4, but since no other changes will be made to those forms, neither the forms nor the instructions for those forms will be reprinted in the appendix.

In its comments, the NEA incorporated by reference the arguments presented by its state affiliates in *Alabama Education Association, et al. v. Chao*, No. 1:03CV00253 (D.D.C. filed Feb. 14, 2003). There, the NEA's state affiliates argue that they represent only public employees and are self governing, autonomous organizations affiliated with the NEA, not subordinate bodies within the meaning of section 3(j)(5) of the LMRDA and, therefore, not subject to the LMRDA, even if the NEA is subject. The AFL-CIO, in a comment related to the NEA state affiliates' argument in *Alabama Education Association, et al. v. Chao*, cautioned that neither the Department of Labor nor the Ninth Circuit can do away with the statutory limitation of the section 3(j) proviso to entities that are "subordinate" to a national or international union covered

by the LMRDA. The AFL-CIO further commented that the proposal to amend coverage language should not be used to preempt pending litigation, and the NPRM preamble should not be used to create an argument in litigation that the Department of Labor's adoption of this statutory instruction is entitled to deference.

The question whether a particular labor organization falls within the *Bremerton* test is not decided by the proposed language of the instructions or the references to *Bremerton* in the NPRM. That coverage issue involves a factual determination that will turn on the application of the statutory terms to the circumstances of each case. While this rulemaking provides a vehicle for making clear the Department's interpretation of the statutory term, after notice and comment, the factual question whether a particular labor organization meets the statutory test applying that interpretation cannot and should not be resolved in this context. The NEA's state affiliates and other entities are free to challenge the application of the *Bremerton* interpretation to their organizations and to pursue any avenues relative to the issue of their coverage under the LMRDA. The proposed language in the instructions and accompanying references are not intended to forestall any such action, but rather to make clear the Department's views regarding the general meaning of the statutory terms.

One commenter mistakenly read the instructions and the preamble language to include state or local central bodies among those organizations that must file. The LMRDA and the Department's regulations at 29 CFR 451.5 make clear that a "state or local central body" is excepted from the definition of labor organization in section 3(i) and the definition of a labor organization deemed to be engaged in an industry affecting commerce in section 3(j). The

Department's adoption of the reasoning of the *Bremerton* court does not bring these organizations within the ambit of the LMRDA, either explicitly or implicitly.

An additional comment urged the Department to continue to seek full disclosure from the Washington State Education Association, as state law provided no comparable protection for public sector employees. The Department will seek compliance from all organizations required by the LMRDA to file labor organization reports.

B. Itemization of Major Receipts and Disbursements

1. General Comments Concerning Itemization

The Department received numerous comments concerning proposed Schedules 14 through 19. These Schedules call for individual identification of certain receipts and disbursements for various categories that reflect the services provided to union members. Receipts and disbursements are allocated to Schedules 14 through 19 and are either listed as individual entries or as aggregated entries. Individual (or "major") receipts and disbursements, as well as payments to or from a single entity or individual that aggregate to meet the disclosure threshold, must be reported.

The Department received several comments supporting itemization. Most of these comments expressed general approval for requiring disclosure of financial information in greater detail. A common theme of these comments was a belief that the Department's proposal would increase

the accountability of union officials to union members, serve to discourage union corruption, and improve overall union democracy. One comment cited a specific instance in which union officials concealed improper transactions within aggregated disbursements, which could have been prevented (or at least identified) by itemized reporting. Similarly, commenters related well-publicized situations involving union officers who allegedly misappropriated funds as examples of instances where itemization, by allowing members to detect questionable transactions, would have limited the damage to the union and its finances and, perhaps, deterred the individuals involved from breaching the obligations entrusted to them. Other commenters stated that without itemization – and the transparency it brings to union finances – union members have little defense against the potential mismanagement and misappropriation of union funds. Unusual spending patterns or shifts in expenses, as revealed in a Form LM-2, a commenter stated, may tip union members off to fraud and abuse, allowing them the option of disciplining or removing wasteful or corrupt union leaders.

Other comments supported itemization because it replaces broad categories with more useable, informative, and detailed data. These commenters emphasized the members' right and need to know how a union is spending their money to ensure that it is being managed well and spent wisely. Members expressed particular concerns about the lack of information about various categories of expenses, among them political activities, joint labor-management programs, and the transfer of funds to other entities. The Regulatory Studies Program of the Mercatus Center at George Mason University commented, "By increasing the number of classification categories, lowering the dollar level of disclosures, and by potentially increasing the number of people who

must participate in a potential fraud, the revised reports . . . should make committing fraud more costly than it is under current disclosure rules."

Many commenters turned to recent corporate finance scandals in describing their general support for greater transparency among institutions, whether governmental, business, or labor organizations. They stated that greed can infect any organization and that disclosure is its best remedy. As noted by some commenters, the fiscal integrity of labor organizations has a profound impact on the financial stability and security of employees. The mismanagement, or failure, of labor organizations can cause major disruptions in work relationships, retirement plans, and overall employee well being.

The Department received voluminous comments opposing itemization and raising a number of concerns about the necessity of reporting this information; potential problems involving adequate accounting systems; possible adverse consequences from disclosing the required information; and a variety of other issues.

Several comments opposed itemization in general as too costly or burdensome because current union accounting systems or practices do not capture all of the information required by the criteria, and that electronic record keeping systems will have to be reconfigured to comport with the revised form. The Department believes the comments overstate the technological difficulties involved in transforming existing accounting systems to accommodate itemization procedures. Preliminarily, union officers and employees will need to study the instructions and forms, and thereby gain an understanding of the new requirements. The Department will launch a

compliance assistance initiative that includes an overview of the requirements, a comparison to the old requirements, a tentative schedule of seminars for international, national, intermediate and local unions hosted throughout the country, an email list-serve to provide periodic updates to interested parties, web-based materials that include frequently asked questions, a description of the Form T-1 registration process, and other topics of interest to filers.

Once union officials understand the new reporting requirements, it may be necessary to make some adjustments to their recordkeeping systems. The most important change that should be made immediately involves the tracking of disbursements and "other" receipts to ensure that each disbursement and "other" receipt is allocated to the proper disbursement category with a descriptive purpose. Although some commenters asserted that this is a dramatic policy shift tantamount to imposing a new accounting system, unions have always been required to allocate each disbursement to one or more disbursement categories on the Form LM-2. The revised form alters the categories but not the underlying method of allocating these disbursements. Indeed, there are fewer disbursement categories on the new form. After allocating the disbursement, the union officer or bookkeeper makes a brief entry on the "purpose" for each transaction in a memo field. These sorts of operations are routine within accounting systems; organizations change the way disbursements are classified in the normal course of business.

The AFL-CIO's survey data also suggests that many unions already maintain their records and accounting systems in ways that are readily compatible with the requirements of the final rule. For example, the AFL-CIO's survey data suggest: 59% of national and international unions record expenses by type of activity or functional category; 62% of unions can generate the required itemization detail; 86% of unions do not have trouble downloading information from

their account systems into a spreadsheet; 40% of national and international unions have a system of accounts receivable that is immediately compatible with the final rule, and 66% of national and international unions have a system of accounts payable that is immediately compatible with the final rule. Labor organizations that do not currently maintain electronic books, or that use accounting software that cannot be modified to track the data required by the revised form, will experience an increased burden, but as the analysis under the Paperwork Reduction Act indicates in Section V, the burden is, on average, a modest one.

The burden of reporting the individual items required by Schedules 14-19 is minimized by the electronic reporting system, which creates efficiency gains by performing the administrative functions of the reporting system. To this end, the Department has provided technical specifications to assist labor organizations in converting financial data into a form supported by the Department's electronic filing software. The technical specifications contained in the appended Data Specifications Document (DSD) inform affected unions of the various data formats that can be exported into the electronic form. Filers will have the option of exporting itemized data from standard accounting reports in one of several common file formats. There will be a non-recurring burden as the filers create the proper reports, which can then be used in future years. It is important to note that smaller filers that would only report a handful of itemized transactions for the year may choose to complete the form manually through copy-and-paste techniques rather than using the DSD to set up the necessary accounting reports to export the itemized data. As the analysis of the burden associated with making the changes required by the revised form, set forth in Section V, demonstrates, the burdens anticipated by many commenters are overstated.

As explained in Section V, the Department agrees with some of the comments that, even though the Department has received no comments over the years regarding its published assessments of the burden of filing the current Form LM-2, the burden of filing the current form may have been underestimated. The Department has revised its assessment of the burden associated with the current form upward in response to the comments it received in order to improve the estimate of the additional time and cost involved in filing the revised form. Even using these higher estimates and acknowledging that there will be increased costs for reporting labor organizations as a result of these reforms, the Department has concluded that the advantages derived from the more detailed reporting outweigh the extra burden imposed on unions. As noted above, the FASB acknowledges the utility of itemized (or "disaggregated") financial data. FAS No. 117, ¶ 118. By contrast, reporting in general "bottom-line" amounts does not provide the level of detailed information that will effectively answer an interested member's inquiry. Moreover, generalized reporting places the burden on the member to obtain the information from the union, including resort to litigation if the union fails or refuses to disclose the requested information voluntarily. OLMS experience over years of auditing and investigating union financial activities indicates that increased access to information concerning a union's financial picture will enable its members to protect their own interests through more effective vigilance over union funds, and will aid OLMS in future enforcement efforts. Disclosure of basic information about major transactions is the most effective means of providing information to union members who are interested in their organization's financial affairs. Together with reporting receipts and disbursements by functional categories, the proposed rule will provide information that will help ensure that union leadership is acting in the interests of its membership.

The Department disagrees with those comments that suggest itemization will overwhelm interested parties with information. These comments rest on the erroneous premise that an individual seeking information must rely on hard-copy documents to review the Form LM-2. Labor organizations (with few exceptions), however, must file the form electronically. The new procedures provide more detailed, and more accessible, information than the existing system by utilizing the advantages of computer technology. Electronic filing permits the reviewer to focus his or her review using a search engine to guide the inquiry; on-screen (or paper) review of each entry is unnecessary. Further, the current Form LM-2 informs the member only of the aggregate disbursements (or receipts); the member must go through the trouble of obtaining more detailed information from the union concerning the individual transactions in order to find any meaningful information regarding specific receipts and disbursements. Itemized reporting provides the detailed information in a searchable format as an initial matter. Finally, Statement B of the revised Form LM-2 provides aggregate figures for each disbursement Schedule. A member reviewing the revised Form LM-2, therefore, has access to both the aggregate and the individual disbursements for each category. Resort to the more detailed information remains at the member's discretion.

In a related vein, one comment contended that the level of detail required by itemization will inevitably result in unintentional reporting errors, "costly criminal investigations" for misreporting, and "prosecutorial abuse." Two comments expressed an additional concern that the errors could be used to prosecute union officers under the LMRDA because the officers must certify the correctness of the reported information. The commenters' suggestion that increased

reporting errors may prompt unwarranted investigations and prosecutions is speculative and unsupported by any evidence in the rulemaking record. Moreover, only willful violations, not inadvertent errors, can result in criminal liability. See 29 U.S.C. 439.

Several comments argued that itemization imposes a unique reporting standard on unions that no other oversight agency requires and no other entity or organization must meet. The argument is neither accurate nor persuasive. First, as explained in detail in Section II(C), this argument is based upon incorrect assumptions. Second, other agencies do, in fact, require itemized reporting of financial transactions by certain kinds of organizations (for example, the Internal Revenue Service requires itemized reporting of disbursements by Section 527 organizations and the Federal Election Commission requires itemized reporting of receipts and disbursements by federal political committees. Third, reporting practices for a regulated community may vary depending on the particular requirements imposed by various laws. The appropriate standards for financial disclosure by labor organizations must be determined in light of the LMRDA, and not the practices, policies or criteria of other laws. In that vein, the LMRDA sought to address the particular problems posed by labor organization reporting by requiring reports containing "such detail as may be necessary to disclose its financial conditions and operations." See 29 U.S.C. 431(b). The fact that other agencies, administering other laws, utilize different reporting criteria and practices is not a valid objection to requiring itemization for purposes of the LMRDA.

2. Itemization of Confidential Information

One of the most significant concerns expressed by many comments concerned the potential harm to union interests in disclosing confidential financial and personal information required by Schedules 14-19. Commenters contended that such detailed disclosure could adversely affect union interests and activities that should be kept confidential as a matter of law or public policy. The comments focused principally on disclosure of the information to individuals or organizations outside the union that might use the information to impede legitimate union activities or otherwise harm union interests. The comments cited a variety of examples in which such itemization could be detrimental to the union itself or other organizations and individuals involved with the union and its activities: (i) identifying individuals paid by the union to seek employment with a non-union employer in order to assist the union in organizing its workforce; (ii) revealing "job-targeting" or "market recovery" programs; (iii) discouraging the union from seeking legal advice if fee disclosure reveals the attorney-client relationship; (iv) violating legal rules that limit discovery about experts in litigation (*e.g.,* FRCP 26(b)(4)(B)); (v) violating confidentiality agreements in settlements; (vi) revealing information about union organizing campaigns, political activities and legal strategies; (vii) affording tactical advantages to service vendors and opposing parties in contract negotiations; and (viii) endangering the lives of foreign labor activists supported by the union. In some cases, the comments viewed disclosure as the direct cause of a potential harm; in other cases, the comments contended that disclosure may provide clues from which an adverse party could educate itself about union activities, relationships, and strategic goals. Some commenters made similar arguments with respect to the proposal to require itemization of receipts.

The Department agrees that there may be some situations in which the potential harm to union interests occasioned by disclosing certain types of confidential information warrants an exception from the requirement to provide itemized information regarding major receipts that are not reported elsewhere on the form and major disbursements. These situations are likely to be far more limited, however, than suggested by some comments. Unions are not required to provide non-financial information regarding organizing strategy, notes of meetings, or names of volunteers on a Form LM-2. Rather, they are required only to provide certain information regarding financial transactions. Generally speaking, the information disclosed will indicate simply that a disbursement was made to, or money received from, a particular individual for a purpose described by the union. Although there may be certain consequences as a result of such disclosure – as where, for example, a union indicates that a payment has been made for "job targeting" that some might consider inappropriate – such consequences must be both serious and beyond the scope of consequences intended by the LMRDA to warrant consideration of overriding the interest in disclosure embodied in that statute.

The Department has decided, however, that commenters have made a persuasive argument that certain information need not be made available to the general public and that disclosure could be sufficiently adverse to union interests that the modification described below is warranted to permit labor organizations to protect certain confidential information on certain schedules. Specifically, the Department has concluded that this special procedure should be made available for the following types of information:

- Information that might identify individuals paid by the union to work in a non-union facility in order to assist the union in organizing employees, provided that such individuals are not employees of the union who receive more than $10,000 in the aggregate in the reporting year from the union (in which case the statute requires that it be reported, *see* 29 U.S.C. 431(b)(3));

- Information that might provide insight into the reporting union's organizing strategy; and,

- Information that might provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or will be engaged in contract negotiations.

With respect to these specific types of information, if the reporting union believes that itemized disclosure of a specific major disbursement or aggregated disbursement would be adverse to the union's legitimate interests, it may report the disbursement in the "All Other Disbursements" portion of either Schedule 15 (Representational Activities) or Schedule 19 (Union Administration) on the Detailed Summary Page. The union must also enter a notation in Item 69 ("Additional Information") identifying the Schedule(s) from which the union excluded any itemized receipts or disbursements because of an asserted legitimate interest in confidentiality.

A union member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the union's financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 CFR 403.8 (2002). In the Department's view, any exclusion of itemized disbursements from Schedules 15-19 would constitute a *per se* demonstration of "just cause" for purposes of the Act. Consequently, any union member (and the Department, which need not establish "just cause"), but not a member of the public, upon request, has the right to review the undisclosed information that otherwise would have appeared in the applicable Schedule if the union withholds the information in order to protect confidentiality interests. The Department has added to the final rule a provision that clarifies the Department's interpretation of the statute in light of the specific modification of the proposed itemization requirement in response to the numerous comments received in this regard.

Some courts have held that a finding of just cause "requires balancing the [union's] financial interest in nondisclosure against the injury to the interest of [a requesting union member] and other union members in determining how funds held in trust for them are being spent." *Mallick v. Int'l Bhd. of Elec. Workers*, *supra,* 749 F.2d at 785. In the Department's view, this result is not required by the statute and is, in fact, inconsistent with the statutory mandate that any member be permitted to examine records to verify the union's financial report merely upon a showing of just cause, without regard to any competing interest of the union. Accordingly, language has been added to § 403.8 to make clear the Department's view that the fact that a union has chosen not to disclose the identity of an entity that has received a disbursement of $5,000 or more, on the ground that disclosure to third parties might be adverse to the union's interests, is just cause for union members to inquire as to the identity of the recipient or donor and the reason for the

transfer of funds. The statute requires no additional showing to require the union to permit a member to examine the underlying records.

Further, a reporting union will also be permitted to report amounts received or disbursed pursuant to a settlement that is subject to a confidentiality agreement, or that the union is otherwise prohibited by law from disclosing, in the "All Other Receipts" or "All Other Disbursements" portion of the applicable Schedule on the Detailed Summary Page. Similarly, the Department agrees that in the extremely rare situation where disclosure would endanger the health or safety of an individual, the information need only be reported in the "All Other Receipts/Disbursements" portion of the applicable Schedule. In these circumstances, non-itemized reporting of the information, by itself, will not constitute just cause for additional disclosure.

Finally, some commenters asserted that disclosure of itemized information regarding benefits provided to individuals, such as, for example, burial expense benefits, would invade the privacy of those individuals. This argument, while persuasive, affects only disbursements that may properly be reported in Schedule 20 (Benefits). Accordingly, as discussed below, the Department has decided to retain the previous Schedule for Benefits, rather than the one proposed in the NPRM, and to continue to permit labor organizations to report these disbursements only in the aggregate.

The Department believes that the modified disclosure procedures for confidential financial information satisfactorily address the privacy concerns raised by the comments. The comments focus primarily on the potential harm in disclosing a union's confidential information about a particular disbursement to the general public, especially individuals and entities whose interests may conflict with the union's interests. The union must report the disbursement in some form. The modified procedures enable the union to withhold the confidential information from general public disclosure while complying with the Act's reporting requirements. The union, however, may not withhold the information from its members because they have a statutory right to examine the information underlying the reported data if "just cause" exists.

Unless disclosure is prohibited by law or would endanger an individual, the concerns justifying the decision to permit nondisclosure of specific information derive from an interest in preventing members of the public, other than union members and the Department, from gaining access to that information. In the Department's view, withholding on these grounds information that should otherwise be disclosed in the Form LM-2 is a sufficient basis for "just cause." The union's concerns regarding disclosure to third parties arise outside the context of the members' right to information. In order to protect both the union's and its members' competing interests, recognizing that the failure to report specific information for a major receipt or disbursement constitutes "just cause" for examining withheld information in these circumstances, together with the aggregate reporting of disbursements for benefits, strikes an appropriate balance.

Unions will have ample opportunity to argue that the Department's interpretation of the "just cause" provision of the statute (29 U.S.C. 431(c)) is in error before it discloses information that it

has reported only in the non-itemized total. Unless a union voluntarily discloses information when it is requested by a member, the member will still be forced to seek enforcement of the right to this information in federal district court and the union will be able to argue to the court that the Department's interpretation of the statutory requirement is incorrect. Even if the court agrees that use of this reporting procedure is sufficient to support a finding of just cause, the union may argue that it has a legitimate concern that a union member may further disclose the underlying records, or information about the underlying records, in a manner detrimental to the union. In these circumstances, there is nothing in the revised regulation or forms that would prevent the union from seeking a protective order or some other means of protecting its interests.

The Department disagrees with the comment that a union's compelled disclosure of information relating to legal fees associated with an organizing campaign would improperly intrude upon the union's attorney-client privilege. This privilege does not generally extend to the fact of consultation or employment, including the payment and amount of fees. *See McCormick on Evidence*, §90, (5th ed. 1999, updated 2003). Further, while the privilege might protect the identity of a client when sought from an attorney, a client can be required to divulge the name of its attorney, which would be relevant here. *Id.* Similarly, the Department has concluded that the rule that limits discovery about experts in litigation to "exceptional circumstances" is not relevant, in that the language of the rule protects the "facts known or opinions held" of the expert, which would not be revealed in a Form LM-2. *See* FRCP 26(b)(4)(B). Nor is the mere fact that a disbursement has been made likely to reveal a union's legal strategies. Further, to the extent that a payment to an attorney or expert can meet the standards for non-itemized disclosure – that is, for example, because disclosure of a payment to an attorney would somehow provide a

tactical advantage to a party with whom the reporting union is engaged in contract negotiations – a union may utilize those procedures. The Department does not agree that it is necessary to permit unions to avoid the itemized reporting obligation simply because disclosure might reveal the union's political activities. Indeed, as demonstrated by the comments discussed in Section C (4), such disbursements are likely to be of particular interest to union members and no convincing argument has been advanced regarding any legitimate need to keep such information confidential.

Other comments objected to reporting a recipient's address because the information was unnecessary or impinged on the recipient's privacy through its publication. The Department disagrees. The schedules only require the disclosure of business addresses, if available, but at least the recipient's city and state. This information is necessary for verifying the recipient's existence and identity. The privacy concern is questionable given the public availability of most addresses for individuals and business entities on the Internet and in telephone books. Finally, labor organizations may resolve any serious privacy concerns with respect to the types of information specified above by exercising their option to report the disbursement in question in the "All Other Disbursements" entry for the schedule on the Detailed Summary Page. While concealing the identity of individuals or entities receiving disbursements may raise questions concerning the disbursement's legitimacy, such questions are precisely the reason that labor organizations will be required to indicate in Item 69 ("Additional Information") that they have used this procedure and that use of this procedure will constitute "just cause" for union members who request access to the underlying information.

3. Itemization of Major Receipts

The Department proposed changes to Schedule 14 to require additional information for reporting "other receipts" in the reporting period. "Other receipts" consist of all receipts that the labor organization does not report elsewhere in Statement B of Form LM-2. Specifically, the Department proposed requiring a labor organization to identify all the other receipts that are "major" receipts. A "major" receipt is either an individual receipt of $5,000 or more, or the aggregate receipts from an individual source over the reporting period totaling $5,000 or more. Each such receipt must be listed by payee with the following information: the name and address of the entity providing the receipt; the type of business or job classification of the entity; the purpose of the receipt; the date of the receipt; and the amount of the receipt.

A variety of comments addressed the proposed $5,000 threshold for "major" receipts. Some comments considered the threshold too high because $5,000 allows a margin within which union officials may still commit financial improprieties, and prevents union members from reviewing the smaller amounts for potential improprieties, *i.e.*, complete transparency for union finances. The comments recommended thresholds ranging from zero to $2,000 as a means of obtaining greater (or complete) information about a union's receipts. Other comments considered the threshold too low. The majority of these comments recommended $25,000 as an appropriate figure; others suggested basing the threshold on a percentage of the union's receipts (the higher of either 4% or $15,000, or a level related to the GAAP concept of materiality). A related recommendation applied a graduated threshold that increases with the increase in a union's

income. In general, the proponents of higher thresholds contended that the $5,000 figure results in burdensome reporting requirements and excessive detail.

The Department believes that $5,000 is an appropriate threshold for reporting "other" receipts. The comments underscore the competing interests in setting a reasonable figure. Setting the threshold lower (or eliminating it entirely) increases the number of receipts that must be reported, which correspondingly increases the information available for inspection. A lower threshold, however, also would increase the burden, particularly for aggregated receipts from individual sources. Raising the threshold would reduce the reporting burden, but it also would reduce the financial information captured for review and thereby undermine the goal of transparency. While a strong argument could be made that all disbursements are significant and should be itemized, the Department concludes that some threshold must be used that accommodates both the purpose behind the disclosure of such information and the concerns about the burden of tracking and reporting the information. The $5,000 threshold strikes a balance between the opposing viewpoints. Full-time workers who were union members had median usual weekly earnings of $740 in 2002. *See Union Members in 2002*, Bureau of Labor Statistics News Release (USDL-03-88) (http://www.bls.gov/news.release/union2.nr0.htm). Thus, it is reasonable to assume that to union members, $5,000 represents a significant amount of money. A receipt (or aggregated receipts from an individual source) in this amount may reasonably attract interest in the payment's source. The Department will continue to be mindful of the need for any future adjustment in the threshold for itemization in order to ensure that the information reported is meaningful.

The Department rejects the suggested use of percentage-based thresholds rather than defined dollar amounts. A percentage-based threshold will vary annually depending on the figure (*e.g.*, annual receipts) from which it is derived. This figure cannot be determined until the close of the fiscal year. In any given year, moreover, the base figure itself may be controversial if the Department and the union disagree as to the monies that should be included in that figure. A percentage-based threshold is therefore unstable and more difficult to enforce. A defined dollar threshold provides an unequivocal and predictable standard by which each union may determine whether a receipt must be reported as a major receipt, as well as one that members may use with ease and certainty in reviewing the Form LM-2. Some commenters recommended that the Department index the threshold annually for inflation. The Department disagrees for the same reason it rejects the use of a percentage-based threshold: adopting a figure that is subject to annual fluctuation creates an unpredictable standard. The Department believes all parties will benefit from a defined standard that applies to all unions. The Department also rejects the use of a graduated threshold linked to union income. This approach suffers from the same defects as percentage-based thresholds and thresholds indexed to inflation, discussed above. Furthermore, a single standard unrelated to union income promotes the purposes of the LMRDA. Although the economic significance to the union of $5,000 may vary with the size of a union's income, the interest of the membership in having access to a broad array of information concerning the sources and uses of union finances, and in the detection and deterrence of fraud, remains constant.

The proposed Schedule 14 requires a union to report aggregated receipts from each individual source if the total amount received from the individual source is $5,000 or more. Some

comments opposed aggregation because tracking each receipt throughout the fiscal year to determine whether all receipts from a specific source ultimately reach the threshold is burdensome. The Department believes that aggregation of receipts is appropriate. In terms of its interest to a union member, there is no difference between a single $5,000 (or more) receipt from one source and several receipts from one source totaling $5,000 or more. Consequently, reporting aggregated receipts is equally important in terms of achieving transparency for a union's financial picture.

Despite the concerns expressed by numerous commenters, tracking multiple receipts from a specific source throughout the fiscal year will not impose unreasonable additional burden on a reporting union. The revised form alters the categories but not the underlying method of allocating these disbursements, and, indeed, reduces the number of disbursement categories. After allocating the disbursement to the proper category, the union officer need only make a brief entry on the "purpose" for each transaction in a memo field. These sorts of operations are routine within accounting systems. As demonstrated in the Paperwork Reduction Act Analysis, in Section V, the cost of maintaining sufficient information to permit the aggregation of major receipts not reported elsewhere from, and disbursements to, a single entity over the course of the year, combined with all of the other changes as a result of this rule, were estimated in order to arrive at a realistic assessment of the overall cost of these reforms. Balancing this cost for reporting unions against the benefits for union members, and for unions themselves, resulting from increased transparency – including the enhancement of the ability of members to fully participate in the democratic governance of their unions and the deterrent value of disclosure in preventing mismanagement and misappropriation of union funds – the Department has

concluded that itemization, to which only a portion of this cost is attributable, is not only a worthwhile, but an essential, element of this reform.

4. Itemization of Major Disbursements

The Department also proposed to require labor organizations to report "major" disbursements in specified categories. A "major" disbursement is either an individual disbursement meeting the threshold-reporting amount or a series of payments to an individual that, in the aggregate, reach the threshold, in a single category. The Department requested comments on the appropriate threshold for a "major" disbursement, proposing a $2,000 - $5,000 range. The Department also requested comments on whether individual disbursements among different categories should be aggregated to reach the threshold.

The Department received numerous comments concerning the appropriate threshold for itemizing disbursements on the various Schedules. Several comments recommended setting the threshold in the $200 – $500 range to increase the amount of information about disbursements that the unions must disclose; one comment suggested setting the threshold at zero for the same reason. Conversely, many comments criticized the proposed threshold as too low. Several comments expressed general opposition but did not provide a specific alternative. Commenters that did propose an alternative threshold typically recommended using a $25,000 figure. A few comments suggested indexing the threshold to some other figure (*e.g.,* total assets, disbursements or annual revenues) to establish a floating threshold linking it to the union's size or financial

activity. As with itemization of "other" receipts, the proponents of higher thresholds contended that a lower baseline would result in burdensome and excessive detail.

The Department has decided to adopt $5,000, the highest proposed amount, as the threshold for itemizing disbursements. As with the "other" receipts threshold, the fundamental issue involves a balancing of competing interests. Advocates of a low (or no) threshold emphasized the need for transparency of union finances; by lowering or eliminating the threshold, the union must divulge a greater amount of financial information. Ultimately, greater transparency enhances the deterrence of union financial misconduct and provides union members with more knowledge about the union's activities, regardless of any potential financial mismanagement. Greater transparency, however, also involves a greater burden on the unions in terms of reporting. Proponents of a higher threshold focused on this aspect, and urged the Department to set a high standard, *e.g.,* $25,000. After consideration of both viewpoints, the Department believes that a $5,000 threshold strikes the proper balance between the benefits and costs of itemization. First, it is plain that virtually any disbursement is significant in that it provides information on how the union is being run, and provides a potential avenue for fraud. Second, the Department has concluded that the threshold should be set at an amount that will, in effect, establish a uniform standard for determining that a particular transaction, or set of transactions, is reportable. Third, the threshold must accommodate the concerns about the burden of tracking and reporting the information. The Department will continue to be mindful of the need for any future adjustment in the threshold for itemization in order to ensure that the information reported is meaningful.

Several comments recommended using indexed thresholds rather than defined dollar amounts. The comments contended that indexed thresholds provide a more accurate basis for determining whether a disbursement is significant in light of the union's overall level of outlay. Two comments merely suggested adopting an indexed threshold as a general proposition. Other comments identified specific alternative formulae: 5% of total union assets; 5% of total disbursements; or a percentage based on the GAAP concept of materiality.

The Department rejects the indexed threshold approach because it does not provide a desirable level of certainty for the reporting community. An indexed threshold will vary annually depending on the base figure from which the threshold is derived. This figure cannot be determined until the close of the fiscal year. In any given year, moreover, the base figure itself may be controversial if the Department and the union disagree as to the monies that should be included in the base figure, complicating a union's ability to comply with, and the Department's ability to enforce, the reporting requirements. Any disagreement over the base figure will necessarily affect the indexed threshold and disrupt the reporting of disbursements. Thus, a figure that is subject to annual fluctuation creates an unpredictable standard. A defined dollar threshold provides an unequivocal and predictable standard by which each union may determine whether a disbursement must be reported. Although the economic significance to the union of $5,000 may vary with the size of a union's income, the interest of the membership in having access to a broad array of information concerning the sources and uses of union finances, and in the detection and deterrence of fraud, remains constant.

The proponents of an indexed threshold or a materiality standard premised their arguments on the belief that a bright line threshold will require reporting of immaterial disbursements. As explained above, the Department's adoption of a $5,000 threshold is based in large part upon the view that receipts and disbursements of that amount are significant to union members. Further, the Department does not believe that the GAAP's test for materiality is persuasive in this context. As a commenter noted, unlike commercial entities, which are accountable based on their profit or loss, labor unions are accountable in terms of the stewardship responsibilities of their officers. Consequently, the use of a sum that would have little effect on an entity's viability may be safely ignored by an investor who cares only for return on investment, but may be of considerable interest to a union member when spent by his or her union, as the union member's interest extends well beyond a concern with the union's bottom line, to the furtherance of its overall mission. A materiality standard would not give sufficient weight to these non-economic concerns, for a union member is interested not solely in the funds themselves, but the activities of the union. *See* Statement of Financial Accounting Concepts No. 2 (SFAC No. 2), ¶ ¶ 123 - 132. Further, adoption of the vague materiality standard as the threshold for itemization would require unions to obtain substantial professional assistance, thus increasing the burden on the labor organization. See *id*.

A few comments opposed reporting aggregated disbursements to a single entity or individual if the total amount meets the threshold because the union would have to track each disbursement through the fiscal year to determine whether the aggregated amount meets the threshold at the end of the year. Other comments treated aggregation as part of itemization and opposed both requirements because they perceived the entire reporting process as imposing burdensome and

costly compliance requirements; providing too much information to be useful; imposing a unique and more rigorous standard on labor unions than applies to any other organization; and requiring significant and costly changes to the union's current accounting system.

With respect to tracking minor (less than $5,000) disbursements through the fiscal year, the Department does not believe the comments identify a substantial basis for abandoning the aggregation principle. Once the union installs or modifies its accounting software to appropriately chart each disbursement, tracking every disbursement regardless of amount will not be burdensome. Indeed, unions already must track every disbursement, and must know the type and amount of each disbursement, in order to report them in the appropriate aggregate amounts for each category on the existing Form LM-2. Furthermore, the advantages of aggregation offset any additional burden from tracking all disbursements. Aggregation denies the incentive to break up a "major" disbursement to a single entity or individual in order to avoid the threshold for itemizing the payment to circumvent the reporting requirements of the statute. Aggregation therefore provides a more accurate picture of a union's disbursements because it focuses on the total amount of money the union pays a particular entity or individual, rather than only the "major" disbursements. Given the benefits of aggregation and the fact that unions are already required to track each disbursement, the Department rejects the position that aggregation will be overly burdensome by requiring the union to track all disbursements, including those that ultimately will not be reported as itemized payments.

The Department invited comments on whether to require itemization of disbursements to an individual or entity that, in the aggregate, total less than the threshold amount in a particular

Schedule once the threshold has been reached either in another Schedule or in a combination of Schedules. The comments reflected little or no support for aggregation among the Schedules. Although virtually all disbursements are significant, cross-Schedule aggregation would perceptibly increase the burden on unions, as it would require an additional modification to the union's accounting programs or procedures, and would require internal accounting reports to be generated for all payees under all Schedules, rather than permitting more focused inquiries on a Schedule-by-Schedule basis. As noted elsewhere, the Department believes that the $5,000 threshold strikes a balance between the benefits of transparent financial disclosure and the burdens caused by detailed reporting. The most effective means of preserving this compromise in the context of categorical reporting is to apply the threshold to each individual Schedule. Further, each Schedule reflects the distinctiveness of the disbursements in that particular category. If disbursements to an entity or individual in a particular category are minor as measured by the threshold for reporting, then the union should not have to itemize those disbursements (and all other categories of disbursements) simply because dissimilar disbursements in another category are comparatively more substantial and do meet the threshold. Disbursements to an entity or individual must therefore reach the threshold for each Schedule before a union must itemize the disbursements attributable to that specific category. Meeting the threshold for any one Schedule will have no effect on the obligation to itemize disbursements for any other Schedule. This approach not only reduces the overall reporting burden, but also preserves the distinction among the various categories of disbursements established by the Schedules.

The Form LM-2 requires the union to provide the following information for each itemized disbursement in Schedules 15-19: the recipient's name and address; the recipient's business or job classification; the purpose or reason for making the disbursement; the date on which the union made the disbursement; and the disbursement's amount. The Department received numerous comments objecting to reporting this information. A few comments expressed specific concerns about the difficulty in tracking and recording all of the required information for credit cards, *e.g.*, the date of payment (rather than charge), and the full name and address of the recipient. In this context, one union stated that the proposed treatment of credit cards, which requires that each vendor paid with a credit card be treated as a separate disbursement, is an example of a new burden that the Department's analysis simply ignored. The union also noted that this recordkeeping requirement was far from a standard business practice. Although another union noted that the proposed changes in reporting expenses paid by credit card would vastly increase the number of individual transactions that must be entered, processed and reported, this union stated that it currently follows standard business practices and divides the charges that are paid with a credit card into separate accounting entries for each underlying type of expense and responsible department. The union also noted that any credit card charge that is required to be reported as a disbursement to an individual officer or employee (per the instructions for current Schedules 9 and 10) is coded so that information is available for the current Form LM-2 report. As noted by the preceding comment, unions are now required to break out credit card disbursements by category on the current form, rather than simply treating the payment as a transaction solely involving the creditor bank. To the extent any union may have misapprehended this requirement, the revised Form LM-2 makes this point explicitly.

Another union commented that many credit card transactions involve plane tickets or hotel bills and frequently have charges issued when a trip is booked and a credit issued if the trip is cancelled or changed and that the charges and credits may appear in different monthly statements – sometimes in amounts that are not exactly the same. The union stated that it is not clear from the proposed instructions if the Department intends that such charges and refunds be matched or reported separately. Such amounts must be tracked in the current and revised Form LM-2, as they constitute receipts and disbursements. The method by which these amounts should be tracked is set forth in the instructions. Otherwise, as the union itself noted, if the transactions are reported without any attempt to match them, anyone trying to read and understand the report will find it virtually impossible to calculate the amount of true expenses.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedules that is available to the union. For instance, in the case of credit card transactions for which the union's receipts and monthly statements do not provide the full legal name of a payee and the union does not have possession of any other documents that would contain the information, the union should report the name as it appears on its receipts and statements. Similarly, if the union's credit card receipts and statements do not include a full street address, the union should report as much information as is available, but no less than the city and state. A labor organization may choose to report either the date of the charge or the date of the payment for a credit card transaction as long as the method of reporting is consistent throughout the form.

The Department has considered the comments that assert that an unreasonable burden will be incurred by the filers in recording each transaction in their recordkeeping systems, but is not persuaded by them. The burden is similar to the burden already imposed by the current Form LM-2 reporting requirements. The current Form LM-2 requires unions to track all credit card transactions to determine whether each transaction must be reported on one of the disbursement schedules or elsewhere in the report. The current form does not treat a payment to a credit card company as a single disbursement. For instance, a single payment to a credit card company may include amounts that must be reported in "Disbursements for Official Business" in column (F) of Schedule 9, "Other Disbursements" in column (G) of Schedule 9, and "Office and Administrative Expenses" on Schedule 13. This has always been a requirement. Many credit card companies have made it easier to track information regarding vendors for specific charges by allowing their customers to download the contents of monthly statements or individual transactions electronically via the Internet. Once these transactions have been incorporated into the union's record keeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

C. Disbursement Schedules 14 – 19

1. Reporting by Functional Category

The Department received a large number of comments on its proposal to require unions to report their disbursements by defined categories based, in part, on a grouping of functional activities performed by a union, its officers, and employees. The Department proposed to include eight

reporting categories on the Form LM-2: (1) contract negotiation and administration, (2) organizing, (3) political activities, (4) lobbying, (5) contributions/gifts/grants, (6) general overhead, (7) benefits, and (8) other disbursements. Almost all the national and international unions that submitted comments addressed this issue, as did most of the trade associations and public interest organizations. A number of local union officials and members submitted comments, as did many "agency fee payers" (and other individuals who did not indicate whether they worked in units represented by unions).

The Department received several comments from trade associations, public interest organizations, union members and others in support of the proposal. They asserted that the proposed changes in reporting requirements are necessary to allow members and potential members to better understand the operation of particular unions and to make informed choices about whether to join, or retain their membership in, these unions. They stated that the proposed Form LM-2 would permit a member to determine the union's priorities and whether they accord with the member's own priorities and those of the general membership. The same information would inform individuals who may be considering voting for or joining a particular union. Several commenters also expressed the view that functional reporting would better enable members, the Department, and the public to uncover any improper use of union funds and deter union officials or employees from embezzling or otherwise making improper use of such funds.

Although some commenters stated that the proposed changes would impose some burdens on unions, these costs, in their opinion, are outweighed by the gain in transparency. Today's electronic recordkeeping systems, in one commenter's opinion, make it possible for labor unions

to provide a wealth of financial information with minimal burden. The commenter also stated that the burden would decrease once unions learn of the need to code transactions in ways that fit the reporting categories.

A number of labor organizations stated that the proposed system, if adopted, would entail very substantial burdens and costs to the union without significant gain, if any, in informing union members about the operation of their union. A few commenters indicated that there would be severe practical problems posed by the need to "code," by function, virtually all the union's financial transactions, which they characterized as a burdensome and time-consuming undertaking. Union commenters asserted that they lack the present capability to maintain their records in a way that would allow them to meet the proposal's requirements. The Department finds these contentions unpersuasive. Unions have always been required to allocate each disbursement to a category on the Form LM-2. The revised form alters and reduces the number of categories, but not the allocation process. Accounting software will need to be adjusted to reflect the revised categories, but these sorts of operations are routine within accounting systems and do not present an unreasonable burden. One union commenter noted that long distance charges and utility payments, under the revised rule, must be allocated across multiple functional schedules and that such a process would pose a significant burden. This commenter has failed to note, however, that these telephone and utility payments would have to be coded to a category under the existing form, and further classified by general groupings or bookkeeping categories.

Several labor organizations acknowledged that they already categorize their activities, including disbursements, by functional category. Some explained that they do so in order to comply with

Beck, but others explained that functional reporting is a useful financial management tool. Still others said that they categorize for the functions reported on the current form. At the same time, however, some commenters explained that even with sophisticated functional accounting systems in place, it would be difficult for unions to program their systems to meet the Department's proposed requirements. As demonstrated in the Section V, in the Paperwork Reduction Act analysis, the Department has considered these burdens and determined that the burden is reasonable.

The AFL-CIO stated that the Department's proposal would force each union to conform its operations to the manner in which the Department assumes all unions operate or should operate. In this connection, some of the unions state that the Department's proposal misapprehends the way in which unions conduct their affairs. Many unions argued that the Department's proposal represents the first time that unions have been required to collect and report information by functional categories.

Several commenters expressed concern that the proposal, in spite of the burden and expense it would impose on unions, would fail to achieve its goal of better informing members about union finances and operations. As put by one commenter, the proposal creates artificial and misleading categories of disbursements that will overwhelm a member with a deluge of detail, not enlighten him. These comments rest on the erroneous premise that an individual seeking information must sort through a paper submission to review the Form LM-2. Electronic reporting permits a union member to focus his or her review using a search engine to guide the inquiry; on-screen (or paper) review of each entry is unnecessary. Further, the current Form LM-2 informs the member

only of the aggregate disbursements (or receipts); the member must go through the trouble of obtaining more detailed information from the union concerning the individual transactions in order to find any meaningful information regarding specific receipts and disbursements. Itemized reporting provides the detailed information in a searchable format as an initial matter. Finally, Statement B of the Form LM-2 provides aggregate figures for each disbursement Schedule. A member reviewing the revised Form LM-2, therefore, has access to *both* the aggregate and the individual disbursements for each category. Resort to the more detailed information remains at the member's discretion.

Instead of putting unions to the burden and expense of creating the detail required by the Department's proposal, one union expressed the view that the Department should rely on a union member's ability to vote out officials who are pursuing an unpopular agenda, not by imposing additional paperwork requirements. Another commenter suggested that the Department could achieve its goal by permitting unions to allocate their expenditures, based on the estimates of its officers and staff, and thus dispensing with the need to exhaustively "account for every sheet of paper, every pen and pencil, etc." The Department has considered these proposals and has determined that they would not effectively provide an adequate amount of reliable information to union members concerning the union's financial operations and conditions. The revised reporting requirements will enhance union democracy, by providing members with information needed to cast an informed vote. In addition, the suggestion that unions should be allowed to allocate disbursements by estimate would necessarily produce reports of questionable accuracy.

One union stated that the Department could achieve its goal without such drastic changes in the requirements by using the methodology in the current Form LM-2. In its view, the Department could have taken the "natural categories" on the present Form LM-2 and divided them into natural "subcategories," or it could have developed schedules similar to those presently required for "Office and Administrative Expenses" or "Benefits." While such revisions would still involve reporting disbursements in the aggregate, members would have the right under Section 201(c) of the LMRDA, 29 U.S.C. 431(c), to obtain more detailed data directly from their union. The Department rejects the suggestion that unions should be allowed to design their own functional reporting categories or add categories to those prescribed by the Department. As explained by the FASB in the Qualitative Characteristics of Accounting Information, at ¶ 16, not even the FASB expects "all its policy decisions to accord exactly with the preferences of every one of its constituents."

> Indeed, they clearly cannot do so, for the preferences of its constituents do not accord with each other. Left to themselves, business enterprises, even in the same industry, would probably choose to adopt different reporting methods for similar circumstances. But in return for the sacrifice of some of that freedom, there is a gain from the greater comparability and consistency that adherence to externally imposed standards brings with it. There also is a gain in credibility. The public is naturally skeptical about the reliability of financial reporting if two enterprises account differently for the same economic phenomena.

Statement of Financial Accounting Concepts No. 2 (SFAC No. 2), ¶ 16. On this point, the FASB also explained:

> Information about an enterprise gains greatly in usefulness if it can be compared with similar information about other enterprises and with similar information about the same enterprise for some other period or some other point in time. The significance of information, especially quantitative information, depends to a great extent on the user's ability to relate it to some benchmark.

Id., ¶111. Further, a union member's statutory right, under Section 201(c) of the LMRDA, to examine records underlying the report is a complement to, but does not supplant, a union's statutory duty to report. In light of the comments from union members concerning the difficulties members have faced in obtaining review of these records, the Department has determined that altering the categories, rather than merely relying on Section 201(c), would more effectively further the transparency goals of the LMRDA. See 29 U.S.C. 431(c).

The Department does not agree with the assertion that the better course is to simply disaggregate the categories in the existing Form LM-2 to effect more detailed reporting. In response to specific comments, the Department has combined two proposed categories ("Contract Negotiation and Administration" and "Organizing") into a single schedule entitled "Representational Activities," added a category entitled "Union Administration," combined the

proposed categories for "Political Activities" and "Lobbying" into a single schedule, and eliminated the category entitled "Other Disbursements." The categories that remain are tailored to reflect the activities performed by unions, and will allow union members to readily gauge whether the union is committing its resources in the sums and proportions they consider appropriate. Requiring itemization of major disbursements within the current categories would not serve this purpose.

Union commenters faulted the proposal for failing to address the Department's prior position, articulated in 1993, that functional reporting imposed a very substantial burden on unions without significantly advancing a member's understanding of his or her union's operations and finances. There is no merit to the assertion that the Department's proposal failed to address the Department's earlier position. The NPRM described the Department's rulemaking efforts in 1992 and 1993; its discussion addressed the same basic points that were the focus of the 1992 and 1993 rulemaking and outlined the reasons why the Department's current proposals are appropriate. The NPRM also identified aspects of the proposal that differ from the 1992 final rules, thereby providing the public with a full exposition of the Department's position and its views on the various points addressed in 1992 and 1993.

The commenters correctly noted that the Department's current proposals resemble the views expressed in support of the Department's 1992 final rule more closely than the later concerns that led to the Department's reconsideration of functional reporting and the rescission of the final rule. Although the 1993 rulemaking identified some perceived problems with the 1992 final rule, which the Department addresses in the instant rulemaking, the tension between the

positions was based largely on policy assessments as to the relative utility and burden associated with the change in reporting requirements. While the Department does not hold the same views on this issue as it did in 1993, the statute provides – now, as in 1993 – the Department latitude in determining the form and amount of detail that should be reported by unions. Most significantly, there have been advances in technology (including its availability and application) in the last 10 years, as computers and financial management programs have become much more widely used. Internet access is more commonly available and the benefit of making information available over the Internet has been generally, and congressionally, recognized. These changes make it possible to provide substantially more information to union members and the public with less burden on unions than the changes considered in 1992 and 1993 would have imposed at that time.

Union commenters challenged assumptions that underlie the Department's functional category proposal on two related grounds. First, they contended that unions are not required to collect and report their expenses in the categories prescribed by the proposed rule by either "standard business practices" as reflected in GAAP or by "existing [federal] forms" such as the IRS Form 990. Second, the unions asserted that the categories proposed by the Department do not "describe the most common important purposes for which unions spend money." GAAP and the IRS Form 990, they assert, leave it to the reporting organization to identify what the organization believes to be its most important functions. The union commenters contended, in effect, that the Department seeks to impose one artificial, static functional reporting system on all unions without any regard as to how they presently account for their expenditures. In support of these arguments, the comments provided few, if any, examples of the most common purposes for which unions spend money, or appropriate reporting categories. The AFL-CIO argued that the

relevant accounting standards provide for two basic types of expense classification. The first type is "natural expense classification," which "group[s] expenses according to the kinds of economic benefits received in incurring th[e] expenses," for example, "salaries and wages, employee benefits, supplies, rent, and utilities" (*citing*, AICPA *Not-For Profits Guide* 514). The AFL-CIO asserted that the other basic type is "functional classification," which "group[s] expenses according to the purpose for which the costs are incurred." *Id.* at 513. "The primary functional classifications are program services and supporting activities." *Id.* The AFL-CIO then proceeded to argue that the categories proposed by the Department have no inherent rationality since some, like organizing and contract administration, relate to functions or programs, and others, like benefits, have no functional or programmatic relevance.

As discussed, in Section II(D), the GAAP standards do not govern the content of LM Forms, and are not entirely consistent with the congressionally imposed disclosure requirements of the LMRDA, 29 U.S.C. 431(b). Further, the Department disagrees with the assertion that the use of functional categories is either unauthorized or inappropriate in any respect. In the Department's view, the increased use of functional reporting categories in the Form LM-2 will promote transparency and accountability in the reporting of a union's financial condition and operations. The revised Form LM-2, utilizing both functional and "natural" categories, will provide detailed information about financial transactions of labor organizations in an easily understood format. The new reports will be usefully organized according to the services and functions provided to union members. By using the new Form LM-2, members will be able to identify major receipts and disbursements for a variety of activities. The new Form LM-2 strengthens enforcement of the LMRDA by giving members and the public a more complete account of the financial

operations of a union than provided by the current Form LM-2. Moreover, achieving this improvement has been made easier and less costly by technological advances that enable electronic recordkeeping and filing.

Functional accounting is not a new concept to labor organizations. The current Form LM-2, through its use of categories, requires labor organizations to report certain disbursements by function. Although the types of functional categories are being updated to make them more useful to union members, it is unlikely that this would require Form LM-2 filers to make wholesale changes in their accounting systems. The Department has, however, included time in its burden hour estimates to account for acquiring any new or updated accounting software and modifying existing accounting, recordkeeping, and reporting systems. Moreover, functional accounting is required of not-for-profit organizations under the standards established by the FASB. Many of the labor organizations that submitted comments acknowledged that they use functional reporting as a management tool and none of the larger unions has claimed an inability to categorize receipts and disbursements. Labor unions are not-for-profit organizations and, as such, should utilize functional reporting in preparing financial statements. FAS 117, ¶ 26. As stated by the FASB, "[S]pecialized accounting and reporting principles and practices that require certain organizations to provide information about their expenses by both functional and natural classifications are not inconsistent with the requirements of this Statement." It also noted that not-for-profit organizations often provide that information in regulatory filings to the IRS and certain state agencies, which are available to the public. FAS 117, ¶ 3. The IRS requires not-for-profit organizations, including unions, to report their expenditures by certain categories and the IRS uses several functional categories that parallel, in many respects, the categories in the

proposed Form LM-2. For example, both the Form 990 and the new Form LM-2 require political and lobbying disbursements to be reported.

There is no merit to the contention that the proposed rule would unlawfully intrude upon the ability of unions to follow their own accounting procedures for their own internal purposes. The report calls for the submission of data in certain categories, but does not preclude the use of other, internal manipulations of the data. Unions may track expenses in any way they believe appropriate and, for their own purposes or the purposes of third parties (for example, as required by a financial institution for a loan or a state agency), they may report financial matters in the manner appropriate to that purpose. Further, contrary to some commenters' contentions, the Department's proposals effectuate the broad purposes of the LMRDA, while, at the same time, serving the law's purpose to ensure that members be fully apprised of their union's financial condition and operations. As noted above, these commenters have given insufficient weight to the Department's responsibility to determine the detail necessary to accurately disclose the unions' financial conditions and operations and to establish categories that will identify the purpose of disbursements, 29 U.S.C. 431(b), and to "[prescribe] the form of publications and reports" required by Title II of the LMRDA, 29 U.S.C. 438.

The argument that, because neither the IRS nor the *Beck* line of authority require labor organizations to collect or report information in the categories proposed by the Department, the Department cannot reasonably impose such a requirement is unpersuasive. These comments appear to overlook the Department's responsibility to require reports that best fit the disclosure purposes of the LMRDA, not a revenue statute or a methodology developed under a statute

administered by the National Labor Relations Board (NLRB). Each agency has the responsibility to require information relevant to the role established by its enabling statute.

The union commenters have provided no support for the proposition that the interests served by the LMRDA are obviated by other reporting obligations, internal or external. Similar reporting requirements apply in the regulation of securities, public utilities, and health care. In those settings, it would be inaccurate to suggest that a corporation could meet its responsibility under a particular securities, tax, employment or other statute simply by submitting a copy of a report filed with a particular agency without regard to whether it conformed to the purposes of the actual statute involved. The argument is also unpersuasive in the context of the LMRDA.

2. *Beck* Requirements

A number of commenters expressed views regarding the effect of the Department's proposals on the obligation, imposed on some labor organizations by the National Labor Relations Act (NLRA), to allocate expenditures in a way that distinguishes between activities that are germane to the union's representational function and those that are not. *See Communication Workers of America v. Beck*, 487 U.S. 735 (1988). Labor organizations that receive dues from non-member "agency fee payers" in states permitting union security agreements requiring such payments as a condition of employment must make such an allocation to ensure that agency fee payers who object to paying the equivalent of full dues are not charged more than their fair per capita share of the union's costs involved in providing representational services to them. These reporting and allocation requirements are often referred to as *Beck* requirements, a shorthand reference to a

leading Supreme Court case addressing the obligation of unions to individuals who pay agency fees to unions in lieu of membership dues.

Comments generally supportive of the Department's various reporting proposals were received from trade associations, public interest groups, union members, agency fee payers, and individuals apparently unrepresented by unions. Several commented that the proposed rule would make it easier for agency fee payers to enforce the unions' obligation to allocate between their representational and non-representational functions upon the request of agency fee payers represented by a particular union as required by *Beck*. In the current system, a union member states, union officials have a powerful incentive to classify non-representational activities as representational, and the existing reporting forms permit this to be done without detection. This problem, in the member's view, will be remedied by the Department's proposals, because they will enable an agency fee payer to identify the percentage of receipts used for non-representational activities. This member also asserted that the enhanced reporting would permit access to information without having to use a potentially adversarial process. Another commenter stated that while it generally approved of the Department's proposals, the Department should require unions to keep contemporaneous records in order to meet *Beck* standards.

Other comments challenged the Department's proposals on the following grounds: first, that they represent an attempt to impose *Beck* requirements generally on unions, even though the NLRB, not the Labor Department, is responsible for *Beck* enforcement and the *Beck* requirements only apply to unions with agency fee payers; second, they will cause an unnecessary burden on unions that already prepare *Beck* reports; and third, the Department's

proposal to establish categories that do not replicate *Beck* requirements will create confusion and promote unnecessary and harassing litigation.

Beck requires affected unions, upon objection by an agency fee payer (a request by a member of the union does not trigger the obligation), to subtract from the amount of the dues required of members a sum that reflects the per capita share of the union's non-representational activities. In general terms, the "chargeable" representational activities have been held to include such activities as collective bargaining, contract administration, grievance arbitration, business meetings and social events open to members and non-member employees, union publications (to the extent they reflect the union's representational activities), administration of benefits available to members and non-members alike, national conventions, and expenses of litigation related to negotiating and administering the agreement, handling grievances within the bargaining unit, fulfilling its duty of fair representation, handling jurisdictional disputes with other unions, and litigation before administrative agencies and the courts involving members of the unit. Also in general terms, the non-chargeable activities have been held to include activities such as advocating political support or opposition in elections of government officials, lobbying, including promoting or opposing legislation, advertising relating to non-chargeable matters, administration of union benefits unavailable to non-members, union building fund activities, the publication of newspapers or similar activities (to the extent they report on non-representational matters), and litigation services that do not directly concern the unit. *See generally The Developing Labor Law* (4th ed. 2001) 1970-75, 2046-54; *The Developing Labor Law* (2002 Supplement) 330-32; NLRB General Counsel Memorandum (Aug. 17, 1998), available at 1998

WL 1806351; NLRB General Counsel Memorandum (Nov. 15, 1988), available at 1988 WL 236187.

It is not and has not been the intent of the Department to collect information specific to the *Beck* requirements. The NLRB, not the Department of Labor, is responsible for enforcing compliance with *Beck*. At the same time, the partial overlap of categories under the proposed rule and those established by *Beck* is unremarkable. The Form LM-2 functional categories for reporting a union's disbursements and estimating the time expended by union officers and employees in performing various union activities were designed to capture the various kinds of disbursements and activities associated with conducting union business. *Beck* seeks to identify union activities that are not germane to the representation provided to agency fee payers and therefore not properly assessed to agency fee payers if they object to subsidizing the union's non-representational activities. The information reported in the new Form LM-2 may be helpful to an agency fee payer to roughly evaluate his or her union's *Beck* compliance, but it is not designed as a substitute for the *Beck*-specific reporting requirements, which are established by the NLRB, as guided by judicial precedent. The Department takes no position on whether disclosure of the information required by the Form LM-2 satisfies *Beck* requirements. Similarly, *Beck* reports, principally because they lack the individual and transaction-specific information required by the revised Form LM-2, do not provide a useful alternative to the Form LM-2. The Department is not persuaded that the partial overlap between the Form LM-2 and *Beck* reports will lead to confusion among members or that such overlap will lead to an increase in litigation by agency fee payers.

3. Schedule 15 (Representational Activities)

The NPRM proposed a Schedule 15 (Contract Negotiation and Administration) and a separate Schedule 16 (Organizing). The proposed Schedule for contract negotiation and administration called for reporting of disbursements for preparation for, and participation in, the negotiation of collective bargaining agreements and the administration and enforcement of collective bargaining agreements, including the administration and arbitration of union member grievances. The proposed Schedule for organizing required reporting of disbursements for activities in connection with becoming the exclusive bargaining representative for any unit of employees, or to keep from losing a unit in a decertification election or to another labor organization, or to recruit new members. Based on comments received from labor organizations and others, the Department has decided to eliminate the separate category for reporting organizing disbursements and to require that disbursements for organizing be reported in combination with contract negotiation and administration disbursements in a single Schedule entitled "Representational Activities."

Several commenters expressed the view that organizing activities should be reported in the same category as contract negotiation and administration, both to avoid unduly burdening labor organizations that must meet *Beck* requirements and to avoid disclosing sensitive information regarding a labor organization's organizing strategy. Some union commenters asserted that it is inconsistent with NLRB practice and precedent to separate organizing from the category for collective bargaining/contract administration. The NLRB, they stated, recognizes that the two activities are sometimes tightly intertwined.

Several labor organizations, including most notably the Building and Construction Trades Department of the AFL-CIO (BCTD), commented that it simply is not possible in the construction industry to separate disbursements made in connection with organizing efforts from disbursements made for contract negotiations and administration. In this regard, they refer to section 8(f) of the NLRA (29 U.S.C. 158(f)). This section provides, *inter alia*, that it is not an unfair labor practice for a construction industry employer to enter into pre-hire collective bargaining agreements with a labor organization whose majority status has not previously been established and which agreement requires membership in the union as a condition of employment. In these "top down" bargaining situations, the BCTD explains, the terms and conditions of employment are negotiated and agreed upon before any employees express support for or actually become members of the union. The BCTD and others expressed the view that it is not possible in these situations to separate disbursements into contract negotiations differentiated from organizing.

Further complicating the situation for building trades unions, these unions assert, is the fact that often these same unions also engage in traditional "bottom up" organizing. For such purposes, these unions would have to separately allocate disbursements for organizing and contract negotiations. Several commenters who supported the proposal to establish the organizing schedule argued that union members needed detailed information on their union's organizing activities to enable them to accurately assess their union's overall success or failure in its organizing efforts. The commenters argued that if, as the Department has concluded, separate allocations cannot be made in the pre-hire situation arising pursuant to section 8(f) of the NLRA,

but separate allocations could be made for other traditional organizing efforts by the same union, a member would at best get an incomplete picture and at worst an inaccurate and misleading impression of the union's disbursements and overall effectiveness in organizing.

Labor organizations generally opposed the creation of a separate category for organizing. Comments from officers of labor organizations at both the national/international and local levels expressed strong opposition to the proposal to create a new Form LM-2 schedule on which all major disbursements relating to a union's organizing efforts would be reported and then made publicly available over the DOL website. The common thread to these comments was a significant concern that employers would become privy to sensitive union information not otherwise available, such as organizing strategies or the extent of a union's financial commitment to a given campaign. As one union member who was active in organizing his workplace stated, the new requirements to list major disbursements within eight categories "would do nothing to help union members achieve better representation but would literally put the union at a disadvantage when organizing or negotiating contracts with companies." These regulations, he argued, "would give the company inside information to whether or not the union would have the ability to sustain a strike or the ability to fight unfair tactics by the company during organizing drives."

Several labor organizations commented that sensitive information of this type has generally not been available to members, except on a showing of just cause. *See* 29 U.S.C. 431(c). Moreover, they asserted that where just cause has been demonstrated, access to the information is given to union members only, whereas the Department's proposal would provide Internet access to this

sensitive information to the world, regardless of the strength of the union's interest in confidentiality or the potential damage that release of this information might cause to the union – and without any showing of "just cause." The AFL-CIO noted that unions would have no opportunity to protect their confidentiality interests by seeking protective orders. It further argued that information that the courts have held is not subject to disclosure, even when the §201(c) standard of just cause is met, cannot, *a fortiori*, be subject to routine annual disclosure under §201(b) of the LMRDA.

Numerous labor organizations complained that under the Department's proposal unions would be required to list the names of union "salts," individuals who receive subsidies from a union to assist in its organizational activities while working for an employer that is the subject of the organizing drive. Two specific concerns were raised by the commenters: (1) the listed individuals can be targeted by an employer and subjected to discharge or other retaliatory action; and (2) by identifying these individuals by name on the new schedule, employers would be able to learn of an organizing drive in its early stages and take action to undermine the union's efforts.

In the view of the AFL-CIO, publication of detailed information about what types of investigators and consultants a union is using and for what purposes carried with it the potential to undermine the success of the union organizing efforts. In its view, the Department's concession that unions would not be required to reveal the "name of the employer" or the "specific bargaining unit" that is the subject of organizing activities is insufficient to protect the union's interest in the confidentiality of these campaigns. The AFL-CIO noted that with regard to smaller local unions (or larger unions attempting to organize a workplace in a new geographic

area), employers would be able to easily discern from a labor organization's Form LM-2 what workplaces the union campaign is targeting and what steps the union is taking in pursuit of that campaign.

Several organizations urged the Department to protect from disclosure information that, they asserted, could be used to reveal the target and location of an organizing drive. For example, by requiring that the schedule contain discrete data showing substantial disbursements to a hotel where union organizers are staying (particularly in a small town or remote location, or one with only a single industry or employer) the Department's proposal would enable an employer to learn of the organizing drive and initiate action to undermine the campaign. The unions stated that they attempt to keep such information from an employer whose workforce is being organized. The Steelworkers explained that until they receive a substantial majority of signed authorization cards, they do not disclose to an employer that they have an organizing drive underway.

Another commenter, an employer association, suggested that in lieu of shielding the employer's name or the bargaining unit identity, the reporting unions should be given an opportunity to submit both redacted and unredacted versions of the Schedule and an accompanying "Confidential Treatment Request." Under this procedure, a reporting union could offer grounds to the Department in support of its request for identity exemption, and specify the time period sought for such exemption. The Department would then review the request, and either grant or deny the requested redactions before making the Form LM-2 publicly available.

Based on these comments, the Department has decided to eliminate the separate category for reporting organizing disbursements and to require that disbursements for these activities be reported in combination with Contract Negotiation and Administration disbursements in a single Schedule entitled "Representational Activities." The Department agrees with the comments that organizing strategies deserve some level of protection. In crafting the final rule, the Department has balanced the legitimate need for members to be apprised of how union funds are expended for this important function with the need to minimize the risk of disclosing sensitive information. By combining the categories, the Department also meets the concerns expressed by the building trades unions that they would be unable to allocate precise amounts to contract negotiations and organizing efforts.

By combining these Schedules, the Department believes that an employer would be far less likely to be able to identify itself as an organizing target merely by examining Schedule entries. Unless one or more disbursements to an individual meet the threshold to constitute a "major disbursement," disbursements would be aggregated with other non-major disbursements for contract negotiations and administration and organizing, thus further shielding such data. Further, the confidentiality procedures, explained in Section III(b)(2), allow a labor organization to withhold any information that would disclose the recipient or target of an organizing expense in reporting the disbursement on the Form LM-2.

The Department decided that this approach is preferable to the suggestion by one commenter that unions submit both a redacted and unredacted schedule for organizing expenses and a request that certain expenses be withheld from public disclosure. The statute requires the Secretary to

publicly disclose the information it receives. 29 U.S.C. 435. ("The contents of the reports and documents filed with the Secretary … shall be public information.") Further, the concerns raised by the comments concerning sensitive information, confidentiality, and the burden involved in distinguishing organizing activities from contract negotiation and administration can be addressed without the need to redact a schedule, and thus more effectively serve the transparency objectives of the statute.

Substantial case law under the NLRA recognizes the employee status of individuals paid by a union to seek employment with an employer in order to assist the union in organizing its workforce and the need to protect them from retaliatory conduct by their employer. *See, e.g.*, *NLRB v. Town & Country Electric, Inc.*, 516 U.S. 85 (1995); *Willmar Electric Service, Inc. v. NLRB*, 968 F.2d 1327 (D.C. Cir. 1992), *cert. denied,* 507 U.S. 909 (1993). At the same time, the individual's status as an employee of the union and the amount of the payments received by him affects the obligation of the union to disclose information that may reveal his identity. On both the existing and the revised LM forms, if a "salt" is paid $10,000 or more per year as an employee of the union, the union is obliged by statute to list him by name on the Form LM-2 and to report the amount of his compensation. If a labor organization makes payments to an individual for services as a "salt" in organizing an employer that exceed $5,000 but not $10,000, the labor organization may choose to refrain from disclosing specific information regarding such payments on the Form LM-2, but only if it indicates that this reporting procedure has been used and provides the underlying information to any union member who requests it. *See* Section III(b)(2).

The Department disagrees with the view that it has applied the LMRDA more stringently to unions than to employers. Unlike the situation with regard to labor organizations, for over 40 years employers and their consultants have been statutorily required (29 U.S.C. 433(a) and (b)) to include particular "persuader" information in their annual reports, while labor organizations have not. Implementation of this statutory scheme by the Department cannot be considered as evidence of either anti-union or anti-employer bias, and the suggestion of a double standard is unwarranted.

The Department also rejects the comment that strike benefits should be reported in the same category as other representational activities. The AFL-CIO argued that because economic pressure devices, such as strikes, work stoppages and lockouts, are "part and parcel of the system" of collective bargaining, this exclusion is bound to create a seriously distorted presentation of the reporting union's collective bargaining disbursements. This argument is unconvincing. The amount that a labor organization spends on representational activities, including strike benefits, will be readily apparent by adding the total disbursements in both schedules together. On the other hand, only by maintaining a separate line item for Strike Benefits will union members be able to discern the true cost of the use of this economic weapon.

Finally, we disagree with the comment that a union's compelled disclosure of information relating to legal fees associated with an organizing campaign would improperly intrude upon the union's attorney-client privilege. This concern is misplaced, as this privilege does not generally extend to the fact of attorney consultation, retention, or employment, including the payment and amount of fees. *See McCormick on Evidence*, §90 (5th ed. 1999, updated 2003). Further, while

the privilege might protect the identity of a client when sought from an attorney, a client can be required to divulge the name of its attorney, which would be relevant here. *Id.*

4. Schedules 16 (Political Activities) and 17 (Lobbying)

The Department proposed separate Schedules on the Form LM-2 for reporting disbursements for "political activities" – intended to influence the selection, nomination, election, or appointment of anyone to a public office, or a particular outcome in a ballot initiative, or for material assessing a political candidate's views on issues – and for "lobbying" – for the purpose of passing or defeating new legislation, advancing the repeal of existing laws, or the promulgation of rules or regulations (including litigation expenses). The Department received some comments supportive of the proposed category for political activities. Labor organizations did not oppose the Schedules and the AFL-CIO did not challenge (apart from its general opposition to any functional reporting) the Department's premise that such information should be reported. The AFL-CIO, however, contends that the separate "political activities" and "lobbying" Schedules should be combined into a single category. Based on the concerns expressed by comments from labor organizations and others, and for the reasons described below, the Department agrees that the two Schedules should be combined into a single revised Schedule 16, "Political Activities and Lobbying."

One commenter stated its belief that the categories are closely related to each other and that each is likely to draw a relatively insignificant portion of the reporting union's resources. It explained that political activity and lobbying by unions typically involve communications with, and

mobilization of, the union's membership concerning issues of interest to the membership. Lobbying, as distinct from membership mobilization, it argued, thus is likely to consume a relatively small amount of union resources. The AFL-CIO added that the Department's proposal to require the separate reporting of "political activity" and "lobbying" is exacerbated by the requirement that time estimates be recorded in 10% increments. It asserted that many unions have programs that are at least as important to their members, and often consume more resources, than either "political activity" or "lobbying." Some labor organizations noted that the Department's current reporting rules do not require that payments by a political action committee be reported if such information already is reported to federal, state, or local government agencies. The proposal, it argued, layers another burden on the local unions, adding unnecessary administrative time and cost.

Several commenters supported the itemization of political disbursements by unions without distinguishing between electoral politics and lobbying, the distinction crafted by the Department's proposal. No commenters expressed any opposition to combining the categories. A labor policy group supported the Department's expansive definition for political activities, recognizing that under the definition unions "would be required to report any and all expenditures that are made for any type of political activity, including political activity directed at a union's own membership." It asserted that union members deserve to know the nature and extent of political activities, lauding the Department's efforts at transparency. The same commenter also supported the Department's proposal with regard to the reporting of lobbying expenses. In this connection, it asserted that a labor organization, as a practical matter, can avoid reporting its lobbying and political expenses to the IRS. The commenter supported the

Department's effort to require unions to follow the same reporting requirements as generally applicable to tax exempt organizations (but not unions) under the IRS rules. It suggested, however, that the Department clarify the meaning of "lobbying" so that it includes "any attempt to influence the general public, or segments thereof, with respect to public policy and legislative matters." Another policy group, while supportive overall of the proposal, asserted that the Department's proposed categories need to be modified to expressly include "grassroots lobbying" and "issue advocacy" by unions.

The comments support the Department's view, embodied in its proposal, that the itemization and aggregation of disbursements undertaken by unions in the political arena will provide information that is useful to union members and allow them to better understand the amount and purpose of their union's activities in this area. This information will supplement the limited information now available to members under other statutory programs. *See, e.g.,* Federal Election Campaign Act (FECA), 2 U.S.C. 431; Lobbying Disclosure Act of 1995, 2 U.S.C. 1601; IRS Form 990. While there are similarities between the information required under these other reporting regimes and the LMRDA, Form LM-2 is designed for the special purpose of providing meaningful information to union members who are not necessarily informed regarding the various exceptions and interpretations applicable to these other regimes. The Department has devised a definition, reflected in the examples set forth in the Instructions to Form LM-2, expressly designed to provide a reasonable amount of usable information to union members.

The revised Form LM-2 is intended to require unions to report many of the disbursements that would not otherwise be reported. Labor unions, unlike most tax exempt organizations under 26

U.S.C. 501(c), are not required to report lobbying expenses to the IRS. *See* Instructions for Form 990 (for line 85); Judith E. Kindall and John Francis Reilly, *Lobbying Issues* 336 (IRS publication available at IRS website), *see also* Rev. Proc. 95-35 (Aug. 7, 1995); Rev. Proc. 98-19 (Feb. 2, 1998). In contrast, labor organizations must include in Schedule 16 (Political Activities and Lobbying) "disbursements for political communications with members (or agency fee paying non-members) and their families, registration, get-out-the-vote and voter education campaigns, and the expenses of establishing, administering and soliciting contributions to union segregated political funds (or PACs) and other political disbursements." Under the revised Form LM-2, labor organizations also are required to report disbursements supporting their dealings with the executive and legislative branches of the Federal, State, and local governments and with independent agencies and staffs, including disbursements for advocating or opposing legislation (including litigation challenging such legislation), and advocating or opposing regulations (including litigation challenging such regulations). Thus, the Form LM-2 will gather information not otherwise reported, and further, the activities that must be reported in the Form LM-2 are much broader than those included in the IRS definition and easier to apply than the more nuanced IRS application (as evidenced by the three pages of instructions the IRS devotes to reporting membership dues and lobbying expenses). Labor organizations also will be required to report disbursements on the Form LM-2 that would not be reported to the FEC because they are directed only at the union's employees and members and their families. Viewed from this perspective, the Form LM-2 does not duplicate any reports filed by unions with the IRS or the FEC.

The Department believes that the unions' comments understate the overall amount of disbursements and officer and employee time that will be reported as lobbying or political activity. In part, this may be based on the unions' misapprehension of the proposal. As discussed above, the Department's proposed schedule is more comprehensive than the FEC and IRS requirements that limit the activities that must be reported. For example, under the Department's proposed and final rules, unions are required to report funds that they use in setting up a PAC and raising funds for it, as well as lobbying activities normally associated with "governmental relations" and "member communications." Further, the Department's decision to combine the two Schedules will increase the likelihood that the Schedule will be used to report a sufficient amount of information to prove useful to union members.

As discussed, the revised Form LM-2 will provide union members with a better understanding of their union's political activities, providing them a measure of the union's financial and human resources dedicated to these activities. Upon consideration of the comments, however, the Department is persuaded that there is merit to the suggestion that the two schedules should be combined into a single schedule. Distinguishing between "political activities," in the election-specific sense of that term, and "lobbying" is not always easy. And, for most union members, the distinction is likely to be much less important than being assured that they can ascertain the purpose and amount of their union's resource disbursements in the political arena. In the Department's view, this new schedule will provide meaningful information to union members without requiring unions to submit separate schedules for this purpose. Thus, the Department has decided to include a single schedule (16) for political activities and lobbying in the revised Form LM-2.

5. Schedule 20 (Benefits)

This category, which tracks a category in the current Form LM-2, captures information relating to all direct and indirect benefit payments made by the union, including, for example, disbursements relating to life insurance, health insurance, and pensions. Direct payments are made from the union's funds directly to its officers, employees, members, and their beneficiaries. Indirect disbursements include, for example, a union's payment of the premium on group life insurance to a separate and independent entity such as a trust or insurance company. The Department proposed that labor organizations would be required to separately identify all "major" disbursements during the reporting period in this category.

The Department received only a few comments specific to this category. The AFL-CIO opposed the collection of benefits to employees and members in a single category. In its view, "employee benefits" is a "natural expense classification," and the inclusion of "member benefits" cannot be justified on the grounds that the schedule has been amended to convey more information about union program activities or supporting services. One labor policy group recommended that "benefits" should be removed as a category and, instead, reported as "other disbursements." The same group stated that unions should have to specifically identify other disbursements in order to minimize embezzlement. Several comments related to the issue of itemization, however, noted that a requirement to disclose specific information about benefit payments could result in unwarranted invasions of the privacy of individuals.

In light of the comments received, the Department is persuaded that the privacy of individual benefit recipients, including those receiving payments for medical procedures, insurance or pension claims, or burial benefits, should be protected. Accordingly, the Department has decided to retain the current schedule for reporting these types of disbursements, rather than using an itemized schedule, and all payments to individuals for such purposes should be reported only on this schedule. A reporting labor organization, thus, will be required to report an aggregate amount of any direct benefit disbursements, which are those made to officers, employees, members, and their beneficiaries from the union's funds, and need only identify the recipients of such disbursements by a general description, for example, "union members." Indirect disbursements – those made to a separate and independent entity, such as an insurance company that pays benefits to covered individuals – will also be reported in the aggregate and the entity to which the payment is made will be identified by a general descriptive term. These changes also address the comments made by labor organizations concerning the reporting burden.

The Department is not persuaded, however, that this schedule should be modified in any other respect. As discussed in Section II(D) and Section III(C)(I), accounting principles do not restrict a regulatory agency from combining "natural expense" and program functions in a report. Moreover, a union’s aggregated disbursement of benefits provides information that may be of interest to members as a measure of the union's "fixed expenses," allowing them to evaluate the cost-benefit of the policies providing for the benefit payments.

6. Schedules 19 (Union Administration) and 18 (General Overhead)

The Department proposed a Schedule for general overhead, which would include disbursements for overhead that do not support a specific function, such as support personnel at the union's headquarters, and that, therefore, cannot be reasonably allocated to the other disbursement schedules. Several labor organizations noted that the categories proposed by the Department would force a large portion of the union's important and recurring activities into overhead or other expenses. The SEIU estimates that this latter category will contain 90% of all its disbursements. Several labor organizations expressed the fear that reporting disbursements in the manner proposed by the Department will provide misleading information that will be used by those antagonistic to unions to suggest that the union is diverting its funds to interests unconnected with the union's core representational function. Several labor organizations sought clarification concerning particular activities. In the AFL-CIO's view, for example, the Department seems to indicate that certain governance expenses, like meetings and conventions, are to be reported as "general overhead expenses," even though accounting principles counsel in favor of including such expenses as "general management expenses." In this regard, the AFL-CIO states that under *Beck* standards union governance activities are treated as entirely chargeable whereas those same standards provide that union overhead costs generally should be allocated between chargeable and non-chargeable categories. Several commenters expressed the view that the categories prescribed by the Department's proposal fail to account for many basic, recurring union activities.

In response to these comments about the large number of disbursements relating to union administration, the Department has added a new Schedule 19 (Union Administration) to capture

this information. In this schedule, labor organizations will report disbursements relating to the nomination and election of union officers, the union's regular membership meetings, intermediate, national, and international meetings, union disciplinary proceedings, the administration of trusteeships, and the administration of apprenticeship and member education programs (other than political education, as discussed above). By adding this category, labor organizations will be able to accurately characterize the disbursements made for the many activities they undertake because of the requirements of the LMRDA or other activities associated with union administration.

With the creation of this new category, there no longer is a need for a category designated simply as "Other Disbursements," and the Department will eliminate this category from the Form LM-2. The "General Overhead" category will be retained. This schedule includes disbursements that do not support a specific function – for example, disbursements to support personnel, such as maintenance and security staff at the union's headquarters – and that, therefore, cannot be reasonably allocated to the other disbursement schedules. Wherever possible, however, the salary paid to support staff and other disbursements for overhead that the union tracks in relation to specific programs or functions should be allocated to the relevant category. For example, if a union has an organizing department and a political affairs department and currently apportions telephone and utilities payments to both functional schedules, those disbursements should be allocated to the corresponding schedule. Similarly, the salary paid to other support staff should be allocated at the same ratio as the program staff they support. For example, if the union's secretary-treasurer employs a staff of ten employees and the secretary-treasurer reports 60% of his time on activities relating to union administration, 10% on political or lobbying activities, and

20% on representational activities, the staff salaries should be allocated to the corresponding schedules using these percentages rather than reporting the salaries as "general overhead." If the labor organization does not currently apportion disbursements for utilities or similar expenses according to program or function, it will not be required to do so on the Form LM-2, but may choose to do so to provide greater clarity for its members. In any event, the labor organization should accurately describe the purpose of the disbursement, whether it is reported in a specific functional category or as "General Overhead."

7. Schedule 17 (Contributions, Gifts and Grants)

The existing Form LM-2 requires reports of all disbursements for contributions, gifts and grants during the reporting year. The NPRM proposed that labor organizations be required to separately identify any "major" receipts during the reporting period. Although the Department proposed no changes to this category, a few comments specific to this category were received. The AFL-CIO asserted that the Department was mistaken in establishing a separate category for "contributions, gifts and grants." It noted that such funds, as recognized by the Department itself in its proposal, should be reported in any specific services category to which they relate (not as part of the residual schedule). The AFL-CIO asserted that this recognition by the Department evinces that the schedule does not constitute a separate major program service. The AFL-CIO also submitted a report prepared by Dr. Ruth Ruttenberg as an attachment to its comments, which argued, based on a survey of 65 national and international AFL-CIO affiliates, that only 60% of all reporting national and international unions capture the required data and of these unions "less than 18% of reporting unions are currently able to report contributions to an entity

aggregating to $2,000 or more and then allocate the disbursements by prescribed functional category."

These particular comments appear to reflect a misunderstanding about what unions now are required to report under the current Form LM-2. First, unions are currently required to report information about disbursements for "contributions, gifts and grants," thus calling into question the validity of the statement that only approximately 40% of unions capture data related to this category. Second, the reported inability of a few unions to report contributions at the lowest proposed threshold level and then "allocate the disbursement by prescribed functional category" suggests that the Ruttenberg report confuses this aspect of the Department's current proposal with the Department's 1992 reporting rule. While that rule contained such a requirement, the Department's current proposal requires only that contributions, gifts and grants be reported in Schedule 17, without any further allocation to any additional "functional" categories. Other aspects of the AFL-CIO's Ruttenberg report are discussed below.

Some commenters who supported the proposal suggested some modifications. One policy group recommended that "contributions, gifts, and grants" should be removed as a category and, instead, should be reported as "other disbursements" and that unions should have to specifically identify other disbursements in order to minimize embezzlement.

In the Department's view, it is appropriate to keep this schedule. As noted in the Department's proposal, such funds should be reported in the other functional categories as appropriate (and, where in excess of the $5,000 threshold, itemized as a contribution, gift, or grant). Nonetheless,

there will be some disbursements that cannot be easily allocated to another functional category. By keeping this category, union members will be able to more easily identify such disbursements. If the reported aggregated amount warrants further inquiry, members may request further information from the union to determine whether such voluntary payments conform to the union's internal rules and to evaluate whether they were made for legitimate and worthy purposes.

8. Job Targeting

The Department received a few comments requesting that the Department establish an explicit requirement that unions report particular details for certain "job-targeting funds" (and funds serving the same purpose, but labeled as "industry advancement," or "market recovery" funds). One commenter asserted that these funds have become widespread in the construction industry and that express reporting requirements are essential to correct widespread violations of the Davis-Bacon Act. The commenter asserted that the Labor Department, the NLRB, and two courts of appeal (D.C. and Ninth Circuits) recognize that job targeting programs are antithetical to the purposes of the Davis-Bacon Act because they represent an unlawful payment from the workers' wages to the contractors performing Davis-Bacon jobs and tend to distort local prevailing wages. The commenter argued that the Department has allowed this practice to continue unchecked. As a result, according to the commenter, millions of dollars are being misappropriated by unions from their members' Davis-Bacon wages, through the device of compulsory dues (as well as payroll deductions), and returned to the benefit of employers via job targeting funds.

The commenter recommended that the Department require unions to report: the employers receiving the job targeting funds; the amounts paid to each employer; the project(s) for which the employer received the funds; and the source of the funds. As an alternative, the commenter suggested that such accounting could be avoided if a union certifies under penalty of perjury that no funds used in a job targeting program have been derived from wages paid to employees on Davis-Bacon covered projects. The commenter also asserted that similar modifications should be made to the Department's T-1 proposals.

The Department has determined that it would be inappropriate in this rulemaking to require reporting requirements specific to job targeting funds. In the Department's view, receipts and disbursement of job targeting funds that exceed the itemization threshold will be disclosed as a result of the general reforms implemented by this rule. Additionally, the Department notes that the NPRM made no reference to the possibility of creating reporting requirements specific to job targeting funds. The unions and the organizations that engage in job targeting initiatives have an obvious interest in whether specific reporting requirements should apply. They should be provided a full opportunity to address this issue before the Department promulgates a rule specific to the concern identified by the commenter. If, however, a labor organization has an interest in, and contributes $10,000 or more to, an entity that meets the definition of a trust and that entity makes targeted disbursements for the purpose of increasing employment opportunities for its members, the labor organization must file a Form T-1 if the entity has $250,000 or more in annual receipts.

D. Schedules 1 and 8 – Accounts Receivable and Payable Aging Schedules

The Department proposed the creation of new aging schedules for accounts receivable and accounts payable that would require labor organizations to report: (1) individual accounts that are valued at $1,000 or more and that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and (2) the total aggregated value of all other accounts (that is, those that are less than $1,000) that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period.

A number of comments criticized as too low the $1,000 threshold for itemizing individual accounts payable and receivable that are more than 90 days past due at the end of the reporting period. Some unions with substantial receipts asserted that the Department was mistaken in stating that "[t]he threshold of $1,000 eliminates the burden of individually reporting routine collections of dues and other fees," 67 FR 79285. The unions stated that union dues would routinely be reported on the accounts receivable aging schedule under the $1,000 threshold. Some unions stated that for unions with substantial dues it is not that unusual for union members to fall more than $1,000 behind in dues payments. Unions stated that the itemization of $1,000 accounts would be unduly burdensome (resulting in thousands of small entries), would invade the privacy rights of union members, and would be of little informational value. One organization commented that in the context of Schedule 5 (individual marketable securities), the notice of proposed rulemaking stated, "$1,000 can now be considered a de minimis amount." 67 FR 79285. This organization suggested that the Department set the thresholds for Accounts

Receivable Aging Schedule (Schedule 1), Accounts Payable Aging Schedule (Schedule 8), and Investments Other Than U.S. Treasury Securities (Schedule 5) at $5,000 in order to be consistent. Several other unions advocated raising the accounts payable and receivable threshold to at least $5,000. One commenter proposed a new threshold of $10,000. On the other side, one organization asserted that the $1,000 threshold was too high and should be lowered to require disclosure of smaller accounts. One organization stated $1,000 was the correct level, and one union stated that the requested information would not be a burden at the $1,000 level. Finally, a few unions recommended eliminating the dollar amount altogether and replacing it with an alternative threshold, such as, for example, 10% of the union's aggregate receipts. These commenters noted that such an approach is consistent with the Department's regulation of employee benefit plans investments.

In response to these comments, the Department has decided to raise the threshold for itemization in Form LM-2 Schedules 1 and 8 to $5,000. This dollar threshold is consistent with the weight of the comments and corresponds with the itemization threshold developed for other disclosure requirements under Form LM-2 including: (1) Investments Other Than U.S. Treasury Securities (Schedule 5); and (2) Itemization of Receipts and Disbursements (Schedules 14-21). In the Department’s view, the higher threshold will significantly reduce the burden identified by some unions of having to itemize accounts, such as individual union dues receivable, which in their view are relatively insignificant in light of the very substantial finances of some unions. By setting the threshold at $5,000, the interests of union members will still be adequately served by ensuring the disclosure of significant union accounts that have not been paid or collected in a timely manner.

Several unions also broadly criticized the itemization requirement, disputing that itemization would benefit anyone. These commenters stated that reporting aggregate numbers for accounts payable and receivable would be far less burdensome to unions without diluting the value of the information to members. The commenters explained that accounts more than 90 days past due are relevant, if at all, only as they relate to an individual union's overall cash flow. Several organizations stated that there is no analogous requirement of itemization placed on public companies, as the SEC requires only aggregate reporting. Itemized accounting is also inconsistent with GAAP, these commenters argued. Finally, a number of unions proposed an alternative that unions disclose only those accounts payable or receivable that are liquidated or written off at the end of the reporting period.

In the Department's view, itemized disclosure is important because it provides a vital early warning signal of financial distress. In setting the reporting threshold at 90 days, the Department took into account the typical payment cycle of 30 days for most accounts and determined that an account unpaid after three payment intervals warrants "flagging" as a matter of good business practice. Union members similarly will benefit from this information as a gauge of their union's overall fiscal management and provide them with the ability to identify particular transactions or a series of transactions that may merit further review. Although there is no general accounting principle that holds that 90 days is a significant time period, it is a benchmark often used, inasmuch as the normal pay cycle for accounts is closer to 30 days. As one commenter pointed out, the Washington Teachers' Union had failed to timely pay many of its bills in the years leading up to the discovery of embezzlement and misappropriation of funds by union officials.

As the commenter noted, early reporting of delinquent accounts payable might have prevented the fraud against the teachers' union before millions of dollars were diverted. The Department's own investigations in other cases reveal situations where a union's failure to pay its per capita taxes is part of a pattern of delinquency on accounts that may be symptomatic of embezzlement by union officers or employees. Under the new schedules, such delinquencies would have been reported and such disclosure might have deterred the fraud, in the first instance.

Itemization of delinquent accounts is also preferable to either aggregate reporting or sole itemization of liquidated accounts in that it provides union members with a more detailed picture of the union's finances, including with whom the union conducts business and the manner in which that business is conducted. The itemization requirement is tailored to a union member's legitimate interest in knowing, for example, whether the union continues to do business with an entity that fails to pay its debts or whether the union continually falls behind in payments to a certain vendor.

Some unions complained that the ordinary interaction between national and international unions and their locals regarding per capita tax payments routinely results in delayed payment of locals' per capita taxes until more than 90 days after the tax is technically due. Reporting these payments on the accounts receivable schedule, they argued, would be burdensome and uninformative. The Department believes that a national or international union may set the specific date (and manner of collection) of these per capita tax payments, but once the date is chosen, that date controls when the per capita payment is due. If, at the end of the reporting period, a local union has failed to pay $5,000 or more for 90 days or more past the specified date

– irrespective of the customary interaction between union and local – that delinquent account must be disclosed on the Form LM-2. The union is free to provide any explanatory information concerning the delayed payment along with these per capita aged accounts.

Several unions also criticized the accounts payable and receivable schedules on the basis that these schedules require accrual-based accounting and many unions only keep accounting records on a cash basis. Many union accounting systems, other commenters argued, track only income and expenses, not receipts and disbursements. Moreover, one accounting firm commented that unions that operate on a cash basis system will have to review their books and records to tabulate each individual account irrespective of the precise threshold for itemized reporting. As noted above, the LMRDA itself requires some accrual basis accounting information, such as assets and liabilities. *See* 29 U.S.C. 431(b)(1)-(3). Because the current Form LM-2 requires this information, the new Form LM-2 imposes no qualitative change in the nature of union financial disclosure, even if the specific schedules for accounts payable and receivable are new. Moreover, no unions will be forced to manually review previous books and records to identify delinquent accounts because the new rule only applies to fiscal years beginning January 1, 2004, or thereafter. Every union will thus have approximately three months (at least, and as many as 14 months depending on the union's fiscal calendar) from publication of the rule to make any necessary adjustments to their record keeping practices before the first fiscal year for which such information must be reported even begins.

One union asserted that the Secretary lacks authority to require itemization of accounts payable and accounts receivable and that the Secretary is only authorized under section 201(b) of the

LMRDA to require disclosure of categories of financial information – not itemized information. A number of unions similarly commented that the underlying individual financial data composing the aggregate categories is already available to union members upon a showing of just cause under 29 U.S.C. 431(c). The Department's response to these arguments is set forth above.

Several commenters raised concerns about individual privacy if unions were forced to itemize accounts payable and receivable over $1,000, including concern that, for example, union members owing dues would be identified by name on the Department website. Commenters requested therefore that the Department clarify that all union dues – both individual and per capita – are exempt from the accounts receivable aging schedule as suggested by the notice of proposed rulemaking. The Department notes the increased threshold of $5,000 should eliminate nearly all concerns about individual union dues appearing on the accounts receivable schedule. It would be unusual – and likely take years – for a union member to become more than $5,000 delinquent on union dues. If a union member is more than 90 days delinquent on dues in excess of $5,000, that fact should be disclosed. Per capita tax payments do not implicate privacy concerns and, as discussed above, must be disclosed when an account is over 90 days past due and exceeds $5,000.

Several unions contended the accounts payable aging schedule will falter on its stated purposes of deterring financial fraud because, irrespective of what the schedule looks like, union insiders who wish to embezzle money or to defraud the union will willfully evade Department reporting requirements. Commenters stated that corrupt officials are not likely to record their activities on

disclosure forms. The Department acknowledges this problem – one that is a recurring concern in any reporting or disclosure system. While it is true that even the most thorough disclosure form will not be entirely effective in eradicating fraud, the new requirements significantly advance the cause by making financial fraud more difficult to hide. The new financial disclosure forms require greater specificity and accountability for union funds across the board, including delinquent accounts payable and receivable. In the Department's view, the more detailed reporting required by the revised Form LM-2 will allow the Department and union members to more closely scrutinize a union's finances and more easily identify "gaps" or apparent inconsistencies in reports. The greater the risk to the actual or would be perpetrator that improper conduct will be discovered, the less likely such conduct will occur or go undetected. The revised disclosure forms are thus a critical part of the oversight by the Department and union members over the financial operations of unions. Both this Department and the Department of Justice, in prosecuting criminal fraud, rely heavily on union members to review and evaluate the financial disclosures of their unions and report any suspected activity for investigation, as may be appropriate.

E. Schedule 5 – Investments Other than U.S. Treasury Securities

The Department's proposed Schedule 5 required a labor organization to list: each marketable security that has a book value of more than $5,000 and constitutes more than 5% of the total book value of all the union's marketable securities; and each other investment (*e.g.*, mortgages purchased on a block basis or investments in a trust) that has a book value of more than $5,000 and constitutes more than 5% of the total book value of all the union's other investments. The

current Schedule 2 of the Form LM-2 requires labor organizations to list such securities and investments if they have a book value of $1,000 and exceed 20% of the total book value of the respective securities and investments of the union. The Department invited comments regarding whether the two thresholds of the proposal are appropriate.

None of the comments indicated that the Department's proposal would constitute a significant burden on reporting labor organizations. Rather, the comments expressed various views of the usefulness of the information that would be disclosed under the Department's proposal as compared to information that would be disclosed under alternative thresholds suggested by the comments.

Two local labor organizations stated that the itemization of marketable securities under the Department's proposal would pose no difficulty for reporting labor organizations, but asserted that the schedule would provide no information that would assist union members. In the view of these locals, the existing schedule on the current Form LM-2 was adequate. One commenter stated that the information required to be reported under the Department's proposal would be intrusive without providing any useful information.

The AFL-CIO expressed the view that the $1,000 threshold of the current Form LM-2, given contemporary financial reality, could be considered de minimis, and that only more substantial investments should be required to be itemized under the Department's proposal. The AFL-CIO also suggested that any lower threshold might exceed the Department's authority because, in the AFL-CIO’s view, the Department is constrained to require unions to report only information

material to the financial condition and operations of unions. In its view, most transactions lower than $1,000 would not be material to even a union with meager revenues.

A trade association supported the Department's proposal to raise the threshold for reporting individual securities and other investments to $5,000. In the association's view, investments worth only $1,000 should be considered de minimis. The association further suggested that the Department should also set a $5,000 threshold for individual accounts to be reported in Schedule 1 - Accounts Receivable Aging Schedule and proposed Schedule 8 - Accounts Payable Aging Schedule, two new schedules proposed by the Department. A labor relations foundation, contrary to the Department's proposal to raise the threshold dollar amount to $5,000, argued that $1,000 was not de minimis and that a higher threshold would invite corruption.

Two intermediate labor organizations agreed that $5,000 was appropriate as a dollar threshold, but they urged the Department to raise the percentage threshold from 5% to 15% of the total book value of the reporting labor organization's marketable securities and other investments. Two other comments from local labor organizations recommended that the threshold for requiring itemization of individual investments be based solely on a percentage of the total book value of all of the union's marketable securities or other investments. Finally, the comment of a firm of certified public accountants also recommended a single threshold but suggested that the threshold be based solely on the book value of the individual security or other investment. The commenter recommended that such a threshold be set at a book value of between $25,000 and $100,000.

Upon careful consideration of the varying views on reporting investments, the Department has concluded that the proposed dual thresholds of $5,000 and 5% are appropriate to provide union members with useful information about the union's investments without unnecessarily burdening unions. The Department has not been persuaded that it should require unions to report individual union investments with less than a book value of $5,000. The Department believes that the current threshold of $1,000 (on Schedule 2 of the current Form LM-2), especially considered in light of the asset price increases that have occurred since 1962, when the reporting threshold was set at that level, would require a union to report holdings too small to provide significant, useful information to union members. This would be true whether such holdings represented at least 20% of the union's total investments (in each of the covered investment categories: "marketable securities" and "other investments"), the requirement prescribed by the current From LM-2, or as little as 5% of the union's total investments, as proposed by the Department.

Under the Department's proposal, a union is required to report for each of the two investment categories its nineteen largest investments, if any, over $5,000, as measured by the book value of the investments. For example, unions with total marketable securities valued at less than $20,000 would only have to report a maximum of four holdings in each category.

The Department does not find persuasive the comments that argued that the Department's proposals were intrusive, not useful, or not material. As noted above, because only investments that exceed 5% of the union's holdings are reported and no union can have more than 19 such investments (5% x 20 = 100%), the proposed Schedule 5 will never require any labor organization to disclose to members of the labor organization more than 19 of the largest

marketable securities and 19 of its largest other investments. By providing this information to union members, they will be able to make their own judgments regarding the value and appropriateness of the union's holdings and thereby the soundness of that important aspect of their union's financial operations and condition.

The Department also has concluded that neither of the proposed thresholds should be either raised or deleted. Raising the threshold percentage for proposed Schedule 5, for example, from 5% to 15% of the total book value of a labor organization's marketable securities and other investments would require a labor organization to list at most six marketable securities and a maximum of six other investments (because 15% x 7 = 105%), rather than a maximum of nineteen of each type. Reporting these few investments would portray a limited picture of a union's numerous and very diverse investments. The 5% threshold will disclose to union members a fuller, more accurate picture of the soundness of the union's selection of investments and of that important aspect of the overall financial condition and operations of the union without imposing a significant reporting burden on the organization.

Similarly, raising the book value threshold of individual marketable securities and individual other investments to amounts from $25,000 to $100,000 would foreclose disclosure of all but the very largest union holdings. Especially among labor organizations that file the Form LM-2 or other Form LM-2 filers without extensive investment holdings, thresholds set at book values of $25,000 to $100,000 might except any investment from being disclosed. In the Department's view, members of such unions would have a substantial interest in examining, and reaching

conclusions regarding, the value and appropriateness of the union's limited holdings and the implications with respect to the general condition and operations of the organization.

As indicated above, two commenters recommended that the Department adopt a single threshold based on a percentage of the total book value of the union's investments as the basis for determining when a union must report individual investments for both marketable securities and other investments. The Department recognizes that in some circumstances the use of a single threshold percentage, such as the Department's proposed threshold of 5% of the total book value of investments, would not change the number or mix of marketable securities and other investments that would be itemized under the Department's dual thresholds of 5% and $5,000. The Department believes that ordinarily the disclosure of an investment equal to 5% of a labor organization's total holdings would provide useful information to members regarding the soundness and appropriateness of a union's management of that aspect of its financial affairs.

F. Schedules 11 and 12 – Disbursements to Officers and Employees

The Department received more than 150 comments on its proposal to revise the information to be reported by unions about disbursements to their officers and employees and to require unions to report, by estimation and category, how these individuals expend their working time on behalf of the union. The Department proposed that unions would report for each officer and certain employees (all those paid a yearly salary of more than $10,000) their net salaries and the amounts of withholdings for each individual, along with the amount of taxes paid by the union in connection with the individual's compensation. Under the current report, only gross salaries are

required to be reported for each officer and employee. Withholdings and taxes are reported, but only on an aggregated basis.

The Department also proposed to require unions to provide an estimate of the time expended by their officers and employees in each of eight functional categories prescribed generally for union receipts and disbursements. The Department proposed that unions report each individual's work time, per category, rounded to the nearest 10%. The proposed categories are discussed in greater detail at Section III(C)(1). In 1992, the Department issued a final rule, later rescinded, that also would have required unions to identify, on an individual-by-individual basis, how their officers and employees expended their work time. The 1992 rule also required unions to report disbursements, including officer and employee salaries, in various categories. That rule, however, required unions to report the actual percentages of time expended by the officers and employees in each of the categories.

The Department's current proposal also invited comments on whether unions should be required to more exactly calculate, by category, how the officers and employees expended their time. The Department inquired whether a precise accounting of their time would be more useful to union members than the proposal to allow estimates that are rounded to 10%.

Several commenters supported the Department's proposal. One commenter stated that an estimate of the amount of time spent by union employees and officers in performing their various duties will provide significant new evidence to union members about the priorities of their union leadership. Together with the proposed requirement that unions report receipts and

disbursements by functional category, a commenter wrote, these requirements will provide information that will be very helpful to employees in making decisions about whether to support or join a union. Another commenter asserted that the estimates would enable union members to understand how their leaders are spending their time and help ensure that union leadership is acting in the interests of its membership.

A trade association stated that it strongly supports the Department's proposal, adding, however, that unions should be required to identify more specifically any time allegedly spent in the category of "other disbursements." One local union stated that the estimation requirement strikes the right balance between the need for information and the burden imposed on labor organizations. The same union, however, stated that it would object to any requirement for more detailed time keeping than proposed by the Department.

Another commenter asserted that the time reports would enable agency fee payers to quickly identify the percentage of time used for non-representational matters and, therefore, determine whether their agency fees have been properly calculated. In this commenter's view, the proposed changes would reduce the burden on unions to defend suits from agency fee payers attempting to determine the proper amount of their agency fees.

One labor consultant expressed the view that implementation of the proposed functional time reporting proposal would not result in significant and costly changes to most unions' accounting systems. He stated that many unions already have their officers and employees completing activity report forms or time sheets that categorize their time into major program areas and that

the automated accounting systems used by these unions can be modified easily, if necessary, to conform to the Department's proposed categories. He added that unions that do not utilize time reporting systems could adopt the policies and procedures followed by unions with systems already in place. The same commenter asserted that officers should be required to report actual time, not estimated time.

A labor policy group expressed the view that the timekeeping requirement would be burdensome, especially for larger unions. It nonetheless supported the Department's proposal because the salaries and duties of a union's officers and employees are an important part of union expenditures and reflect the priorities established by union leadership.

Unions generally opposed the proposal, typically for the same reasons they objected to the Department's proposed requirement that they categorize their receipts and disbursements by functional category. *See* discussion at Section III(C)(1). One international union predicted that if the contemplated changes are adopted: (1) union officers would be prevented from fulfilling their responsibilities; (2) unions would be forced to hire employees to track disbursements and allocate expenditures; (3) local unions would have to reconfigure their accounting systems; (4) union officers and employees would have to be trained on how to translate their daily activities to fit the categories; (5) unions would become the target of inappropriate government intervention; and (6) union officers would be subjected to criminal penalties for inadvertent discrepancies in completing the form.

The AFL-CIO stated that there is no way to "exactly calculate" how officers and employees

spend their time. The AFL-CIO submitted a survey that, it contended, demonstrates that any attempt to require something more exact than good faith estimations would impose significant new costs on unions. According to its survey, only 4% of the unions that responded now have the capability to allocate officer and staff time by the functions proposed by the Department. The AFL-CIO stated that only 10%-20% of responding unions stated that they have any type of electronic systems to keep track of officer or employee time by category.

The AFL-CIO noted that any requirement that unions maintain contemporaneous timekeeping records would greatly increase the burden on the union without any corresponding gain in the value of the information obtained. The AFL-CIO also contended that the Department's authority does not extend to prescribing particular types of recordkeeping. Another union complained that the recordkeeping requirement would limit the services provided by the union. It estimated that even if recordkeeping requires only 20 minutes per day to perform, this translates into the loss of many hours that could be devoted to delivering services to the union's members.

One commenter expressed the view that the provision for reporting in 10% increments does not relieve any of the administrative burden imposed by the Department's timekeeping proposal. In its view, detailed records must be kept just to approximate the time expended by each officer or employee. The commenter stated that it is unfair to require union officers and staff to keep time records, when, in its view, this obligation is not required of top business executives or government officials.

One commenter stated that the Department's proposed schedules fail to reflect the wide variety of

tasks performed by the union officers in order to serve their members' interests, *e.g.*, attending union meetings, preparing newsletters, providing union-sponsored health/safety services, and operating job training and enhancement programs. According to this commenter, the proposed categories are misleading in that they suggest that besides collective bargaining, union officers and employees only participate in political and lobbying activities. This commenter suggested that all of the other activities would be considered as "other" suggesting that the individuals spend the majority of their time on matters less significant to members.

The AFL-CIO contended that two of the categories proposed by this Department ("benefits" and "contributions, gifts, and grants") have no employee activity associated with them. These are pure expense categories, and the only employee activity associated with them will be the relatively minor activity connected to disbursement. Thus, in the AFL-CIO's opinion, it is highly misleading to include these as two of the eight categories in which officer and staff time is allocated. In its view, two other categories ("general overhead" and "other") are largely residual and do not relate directly to any major union programs. By narrowing the choice of program categories to only four categories – contract negotiation and administration, organizing, political and lobbying – it asserts that the form will inflate the amount of staff time reported as "other."

One individual commenter asked the Department to clarify whether an individual should record all the time he or she expends on union business (typically 60 hours or more per week in his estimate). This commenter questioned the proper reporting of attendance at a Labor Day parade on a legal holiday or a political rally that takes place during regular working hours. Another commenter questioned the proper reporting of time spent by an officer attending a funeral for an

employer representative on a joint union-employer committee.

A union sought clarification whether a union can report all the hours worked by its support staff (*e.g.*, receptionists, stenographers, secretaries, and mail room personnel) under a single category, or is required to provide an estimate for each individual by each of the functional categories.

The AFL-CIO contended that the proposed rule has the potential for reporting misleading information. In this regard, it states that the NPRM, but not the proposed instructions, indicates "[t]he time allocated among the categories for each officer [or employee] should total 100% of that [individual's] time." This possible requirement, coupled with the 10% increment for estimates, creates the risk of distorting how the individual spends his or her time. The AFL-CIO posed the question of how a union should report an employee's time if she spends 85% to 90% of her time on "contract negotiation and administration," 5% to 7% of her time on "political activities," and the same amount of her time on "lobbying." A union expressed concern about the liability of union officials who will be required to sign the union's report. In its view, it is unfair to impose this obligation upon the reporting officials, given what it considers the subjective nature of the reporting and the official's inability to verify any estimates provided by other individuals.

The Department believes that requiring unions to report the estimated amount of time expended by their officers and employees will provide useful information to their members. It will enable members to determine better how the union utilizes its human resources. A union's own labor costs represent a substantial portion of its yearly disbursements, and the allocation of the time

expended by the officers and employees serves the same purpose as the allocation of a union's other disbursements. Moreover, by reporting how its officers and employee spend their time, by functional category, union members are better able to gauge the union's total investment of resources – labor and capital – to a group of activities. Based on its review of the entire record, the Department concludes that such reporting will not impose undue burden on the union or the individuals on its payroll. While union officials will be required to exercise judgment in making the necessary estimates, it should be remembered that only a good faith estimate, not precise reporting, is required. Union officials should be guided by the purpose of the reporting requirement – providing accurate information to union members – in deciding how best to characterize their activities for reporting estimated time. Finally, no official who makes a good faith, reasonable effort to accurately report estimated time need fear criminal liability, even if the estimate proves arguably inaccurate. *See* 29 U.S.C. 439.

The Department has determined, as a general rule, that it is unnecessary to impose on unions a requirement that they report their time on a more precise basis than a 10% estimation. The Department is not requiring unions to keep detailed time records. The labor organization need only estimate the time spent on each activity. It is up to the labor organization to determine the least burdensome way to provide the information. However, the Department believes the 10% estimation will be sufficient to enable members to evaluate how the time of the union's officers and employees is directed and whether it reflects an appropriate use of the union's financial resources. To avoid the misperception that a union's officers and employees spend no time in a category (or categories) – a possibility if time in a category is less than 5% – we have revised the instructions to provide that where the time reported by an individual in an activity is less than 5%

of his total work time, he should use his or her best estimate to the nearest percentage and report this amount. Similarly, in reporting aggregate totals of time, the union, instead of rounding down to zero, must report its best estimate to the nearest percentage and report this amount. This change should enable unions to ensure that reported time estimates add up to 100% for each employee and this requirement has been made clear in the instructions.

The Department does not believe that allowing unions to customize categories or establish subcategories of existing categories, as some commenters proposed, would promote the purposes of the statute. As discussed in further detail above with respect to the use of functional categories for reporting disbursements, a "customizing" approach would result in vast differences in reporting formats from union to union. This divergence would eliminate a baseline of comparison, result in confusion, and decrease the value of information reported to members and the public. Similarly, the concerns about the difficulty of attesting to the time estimates appear to be overstated. The union should be able to determine without difficulty the manner in which time estimates are to be made. So long as the union has a reasonable operating procedure in place and takes reasonable steps to ensure that officers and employees are following that procedure, the individual responsible for submitting the report generally has no reason for concern. Only "willful" violations – actions that are intentional or taken in reckless disregard of legal requirements – will give rise to liability. *See* 29 U.S.C. 439. While the responsible official's reporting duties have increased, the standard by which this duty is measured has remained unchanged.

The final Form LM-2 instructions have been revised to clarify how particular activities should be

reported and how some common multi-task activities may be allocated. *See* Section III(C). As discussed in the final instructions, union officers and employees should provide estimates based on the total number of hours they work on union business, not merely the first 40 hours or other measure of an individual's paid workweek**.** Despite the Department's efforts to provide clear instructions, the quality of the estimates reported will ultimately depend upon the care taken by the reporting unions in making them. Nevertheless, the Department believes that permitting unions to estimate the time spent in specific activities provides a appropriate balance between the dual objectives of providing as much useful and relevant information to union members while reducing, to the extent practicable and appropriate, any burden on reporting unions. Reporting unions will be encouraged to provide information that is objective, accurate, and reliable because they will want their members to be aware of the time spent by their union's officers and employees in activities on their behalf. Moreover, because the information will be presented in a clear and complete manner, union members will be in a position to determine whether the time reported appears to be appropriate and accurate, thus encouraging unbiased reporting. Because union members elect their officers and are responsible for the governance of their union, even estimated reporting of the manner in which officers and employees spend their time will be far more useful than the total lack of any such information in Form LM-2 prior to these revisions. Accordingly, even though allocating time by estimated percentages is not as precise as exact measurements of time, the fact that the estimates will be reviewed with interest by union members is itself an incentive that is likely to ensure the quality of the information reported.

Several commenters opposed the $10,000 salary threshold. The law's purpose, as stated by one commenter, was to require unions to report the salaries of only their highest paid officers and

staff. Under the Department's rules, however, unions are required to report the salaries of virtually all their employees. The $10,000 threshold is established by statute, 29 U.S.C. 431(b), and therefore the Department is without authority to change the threshold amount.

No commenters specifically supported the proposal to require unions to report the net pay, withholdings, and tax payments for each officer and employee, but a number of comments opposing the proposal were submitted. An international union argued that the proposed reporting of net salaries is contrary to standard business practices and governmental regulations involving an organization's payroll. It asserted (as did one individual) that no other profit or nonprofit organization reports net wages. Moreover, it observed that a publicly traded corporation is required only to disclose the gross compensations of its chief executive officer (CEO) and four senior executive officers if, and only if, that compensation exceeds $100,000.

The AFL-CIO stated that the Department's current requirement that unions report the gross salaries of their officers and employees provides members with sufficient information to meet any legitimate purpose under the LMRDA. It contended further that the LMRDA provides no statutory authorization for the Department to collect this type of personal financial information about union officers and employees. In this regard, it asserted that the statute does not authorize the Department to inquire, even indirectly, into such matters as whether an individual officer elects to purchase supplemental insurance or allocates substantial portions of his or her paycheck to the United Way.

Based on the concern that the Department's proposal could interfere with the legitimate privacy

interests of union officers and employees, the Department has determined that the better course is to maintain the current practice of requiring unions to report the gross salary (before taxes and other deductions) for each officer and employee, on an individual basis. Accordingly, in keeping with the current Form LM-2, Schedules 11 and 12 have been adjusted to reflect this change and a line item added to Statement B on which the reporting labor organization will report the aggregate amount of withholding taxes and other payroll deductions from all salaries, the total disbursed, and the total withheld but not disbursed. This change will protect individual privacy and also reduce the union's reporting burden for these schedules. The reporting union must then allocate each officer's and employee's gross salary, based on a good faith estimate, rounded to the nearest 10%, among five specified schedules (Representational Activities, Political Activities and Lobbying, Contributions, General Overhead, and Administration).

G. Schedule 13 – Membership Categories

Several commenters indicated their support for the Department's proposal to require unions to report the total number of members according to various types of membership categories. These commenters agreed that the newly required information would be useful to union members. A number of commenters, including several International unions, disagreed with the proposed changes to the unions' annual reporting requirements. Some commenters expressed doubt about the authority of the Department to require unions to submit detailed demographic information in their annual reports. Others expressed doubt that union members were interested in the more detailed membership information. Some commenters, while supporting the basic approach of the

NPRM, suggested that the Department require unions to report information in additional categories. These suggested categories included information on:

- Members working on projects covered by the Davis-Bacon Act
- All employers with whom the union has collective bargaining agreements (CBA)
- The length and duration of each CBA
- The number of employees in each covered bargaining unit
- Male and female members
- Members in each state for unions that cover more than one state.

The purpose of the Department's proposed Schedule 13 is to give members a clearer sense of the current health and future viability of their union and to give members a sense of what changes should be made to the union in order to improve the organization. Over time, this information will enable members to judge how effectively their dues are being spent on organizing and if any additional resources should be devoted to that activity. None of the proposed additional categories appears to advance these goals. Consequently, the Department has decided not to require labor organizations to report membership in these categories.

Most comments indicated that, contrary to statements in the NPRM, unions do not currently keep membership information in the categories required by the new Schedule 13. Commenters provided several examples of different methods of categorizing members, including:

- The International Union of Operating Engineers (IUOE) does not maintain information on members by category.

- The American Federation of Teachers (AFT) tracks members, for accounting purposes, by "full membership equivalents."

- The International Brotherhood of Electrical Workers (IBEW) tracks members by industry.

- The building trades unions do not track apprentice, retired or inactive members.

- One union indicated that they classify members as "active" and "retired."

- Retired members in the United Association of Plumbers (UA) maintain active status (and pay dues) to maintain certain benefits.

It thus appears that while each union maintains membership information in some manner, it may not maintain that information in the precise categories contemplated by the proposed new Schedule 13. Union commenters also indicated that, because they do not maintain membership information in the categories contained in the new Schedule 13, it would be similarly difficult for

unions to report the total amount of dues paid by each of the various categories of members and the amount that the union paid or received in per capita dues for each category.

While the Department continues to believe that information regarding the number and type of members of a reporting labor organization is information that is important to the members of that organization, the Department also agrees that each labor organization should be able to maintain such information in the manner that the union believes will be most useful to it as an institution. Accordingly, the Department has concluded that each reporting labor organization should be permitted to name and report on its own categories of members so long as the union provides a definition of each category in Item 69 (Additional Information). For example, if a union feels that it is best for it to maintain membership statistics on "active," "retired" and "apprentice" members, then it should report that information in the appropriate place on the schedule and provide a definition of each category in Item 69. The union will not be required to manufacture or report information for membership categories it does not keep.

This change will address the most prominent areas of concern highlighted by the comments. First, unions, and their members, presumably have some interest in the statistics if the union is already keeping them. Second, it should be no great burden for unions to report membership statistics that they are already keeping in the normal course of business. The Department recognizes that the requirements for reporting membership in the final rule may not disclose as much information to the members as the original proposal. The Department believes, however, that the final rule will disclose more needed information to the members concerning their unions without undue burden.

At least one organization, a provider of information regarding labor organizations to companies, labor attorneys, union democracy groups and academics, cited the tendency of labor organizations that have national, intermediate and local bodies to double-count members and to report the same persons as members of more than one of the related organizations. This practice, according to this commenter, can give members an inaccurate picture of a labor organization's overall strength and is due, at least in part, to the differences in the definition of "member" used by different labor organizations. In this regard, the Department notes that the statute defines the term "member" to include

> any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

29 U.S.C. 402(o). Every labor organization should use this definition to determine whether an individual is a member of the labor organization for purposes of Schedule 13. Applying this definition, however, may well result in two or more labor organizations reporting certain individuals as members because those individuals pay dues to, and fulfill all other requirements for membership in, a local labor organization and in an affiliated intermediate and/or national or international labor organization. In fact, membership in an affiliated local labor organization may well be a requirement for membership in an intermediate or international union. In some

respects – as where, for example, an international union derives substantial support and funding from the members of affiliated subordinate unions – such "double reporting" may not necessarily be an inaccurate reflection of the financial health of the labor organization.

H. Mandatory Electronic Filing

For several years, and with substantial Congressional urging, assistance and leadership, the Department has pursued the development and implementation of electronic filing of annual reports required by the LMRDA, along with an indexed and easily searchable computer database of the information submitted, accessible by the public over the Internet. *See* H.R. Conf. Rep. 105-390, 1997 U.S.C.C.A.N. 2061; H.R. Conf. Rep. 105-825; H.R. Conf. Rep. 106-419; H.R. Conf. Rep. 106-479; H.R. Conf. Rep. 106-1033; H.R. Conf. Rep. 107-342, 2002 U.S.C.C.A.N. 1690; H.R. Conf. Rep. 108-10, 2003 U.S.C.C.A.N. 4. In furtherance of that goal, the Department proposed that all Form LM-2 annual reports be filed electronically and proposed to develop software to enable that process.

The Department received several comments, including comments from members of Congress, accountants, and other organizations, that supported mandatory electronic filing. The commenters indicated that electronic filing is consistent with the recordkeeping requirements for human resource professionals working under other federal statutes and would bring the financial disclosure requirements of unions under the LMRDA into the modern era. The commenters pointed out that millions of people of all economic groups now conduct their financial business, including managing their 401(k) and IRA accounts, on the Internet. The commenters explained

that mandatory electronic filing would also be consistent with the Congressional directives to ESA every year since 1997 to establish an electronic filing system to provide greater public access to the materials filed under the LMRDA.

A few commenters did not think the Department's proposal went far enough. These commenters suggested that all unions, even those with receipts of less than $200,000, be required to file their LM forms electronically. In addition, at least one commenter suggested that labor organizations be required to provide a link on their own website to the union's electronically posted LM form, whether located at the Department's LM website or elsewhere on the union's website.
Many labor organizations, however, expressed their disagreement with the proposal that unions begin to file Form LM-2 and Form T-1 electronically after the issuance of the final rule. These commenters indicated that mandatory electronic filing would be a considerable burden to unions, particularly those unions with volunteer or part-time officers and staff. The union commenters noted that the Department's claim that electronic filing will be more efficient is untested, particularly because the software that will allow unions to transfer their electronic data to the reports is not yet available. One commenter also noted that the Department had indicated in a Government Accounting Office (GAO) report that any electronic filing of reports should be voluntary. The Department notes that its earlier views were shaped by the less mature technology that then existed and without the benefit of continued and repeated Congressional urging to make all such reports available on line. The Department’s present view is shaped by today’s technology, its impact on the ability to obtain, process, disclose, and utilize information, as well as the increased awareness of the importance of transparency to the governance of institutions.

In addition, several unions commented that the Department has overestimated unions' capability to file reports electronically. For example, the International Union of Operating Engineers (IUOE) stated that despite a concerted effort on their part to have locals file their per capita reports electronically, only 21 of the 147 IUOE locals do so. In addition, the International Longshoremen's Association (ILA) reports that none of its over 100 locals that file LM-2 reports currently files electronically. A survey conducted by the AFL-CIO indicates that only 14% of the national and international unions and only 9% of the local unions file their Form LM-2 reports electronically. The Department notes, however, that, in fact, a much smaller percentage of unions have actually *filed* their Form LM-2 reports electronically, a circumstance that is hardly surprising inasmuch as this filing option did not exist until December of 2002, when the Department's system became able to utilize digital signatures. The Department's experience further reflects that far more of the reports filed in paper are actually *prepared* electronically, even though they are submitted by mail to the Department. The fact that the AFL-CIO reports many more reports filed electronically than actually have been filed suggests confusion on the part of those asking the survey questions, or those answering them, or both.

The unions that commented stated that it would be expensive and perhaps not feasible for them to develop the new accounting systems, purchase the new computers, and train their staff to make the changeover to electronic filing within the timeframe required by the proposed effective date. For example, the United Food and Commercial Workers (UFCW) estimates that it will cost two million dollars and take two years to make the necessary changes. Similarly, a study conducted for the AFL-CIO estimates that it will take two to four years for unions to make the

conversion to electronic filing. Therefore, the commenters suggested that the Department conduct a pilot program during which some, but not all, unions are required to file electronically. In the alternative, the commenters suggested that the Department devise a phase-in period during which the requirement for electronic filing is postponed, giving unions time to adapt their systems and train their people to meet the new requirements.

These comments suggest that the relevant issue with respect to electronic filing is not whether it should be required, but rather how and when it should be accomplished. Indeed, in light of the Congressional direction that these reports should be filed and made available electronically, and the delay and expense attendant to scanning paper forms in order to make them available on the Internet, electronic filing is clearly necessary and beneficial. In response to numerous comments arguing that more lead-time is required, the Department has modified the proposed effective date for electronic filing, but remains firmly convinced that the technological concerns associated with electronic filing are overstated.

First, the electronic filing requirement applies only to the largest labor organizations, those that have over $250,000 in annual receipts. Thus, 4,732 unions (about 19% of the total) will be required to file their reports electronically. Unions with annual receipts less than this threshold (62,668 or about 81% of the total) will not be subject to this requirement. *See* discussion in the Paperwork Reduction Act analysis (Section V(F), from which these numbers are derived. These unions, which are less likely than the larger unions to have full-time staff familiar with electronic bookkeeping and reporting, can still file the simpler Form LM-3 or Form LM-4 reports manually, if they wish. The technical feasibility study performed by SRA for the Department

indicated that the proposal could be implemented with relative ease, and this understanding is consistent with the Department's own familiarity with recordkeeping software and union recordkeeping practices. While the AFL-CIO disputes the number of current electronic filers of Form LM-2, it argues that there are actually nearly twice as many electronic accounting programs in use by labor organizations than the Department assumed. In fact, many of the larger labor organizations that commented on the proposal argued not that they were unfamiliar with electronic accounting programs but that their own sophisticated programs capture different data than that required by the Department's proposal.

The NPRM noted a substantial number of filers using the Department's software to complete the existing LM reports; in fact, more recent data indicate that 76% of the Form LM-2 reports filed in 2002 were completed using the Department's software. The AFL-CIO figures cited above, indicating that far fewer labor organizations use the software, cannot refute the Department's actual usage data. First, the Department's data is based on review of all reports filed during the year, whereas the AFL-CIO survey is based upon questions answered by a relatively small number of filers. Second, the AFL-CIO provided only survey results, not the actual survey instrument, and there is little information provided by which to assess its validity. Finally, as noted above, if the AFL-CIO's assertions regarding its numbers are read literally, they are higher, in some respects, than the Department's own numbers, indicating, at best, some confusion on the part either of those asking the AFL-CIO survey questions, or those answering them, or both.

The most comprehensive response to the SRA technical feasibility report, a study performed by Beaconfire Consulting, Inc., was submitted along with the AFL-CIO's comment. This study

does not claim that labor organizations cannot file their annual Form LM-2 reports electronically, but that the Department has underestimated the cost and time involved in converting to an electronic filing system. Most of the issues raised by the Beaconfire study relate not to the cost of compliance for labor organizations, but rather to the cost to the Department to develop the software that will allow labor organizations to submit their reports electronically. The Department is committed, however, to taking the steps necessary to effectuate the new system with minimal problems.

Although the Beaconfire study also suggests that costs to labor organizations may be higher than the Department assumed, Beaconfire acknowledges that their figures, like those developed by SRA, are merely estimates. Beaconfire assumed, without explanation, that the average data file to be transmitted by unions to the Department will be substantially larger than the size assumed by SRA. SRA, by contrast, stated that it extrapolated file size requirements based on the data types and volume currently being reported on Form LM-2, taking into account the fact that data volume varies significantly from union to union. For data that is not currently being reported, SRA made "worst case" assumptions that it viewed as conservative. *See Technical Feasibility Study for an On-Line Financial Downloading System*, SRA, Sec. 3.4.1. Without an explanation of Beaconfire's contrary assumptions, it is difficult to assess their validity, particularly in light of the recognized incentive on the part of regulatees "to inflate cost estimates in the hope of securing a less stringent regulation." McGarity and Ruttenberg, *Counting the Cost of Health, Safety, and Environmental Regulation*, 80 Texas Law Review 1997, 2044-45 (2002).

In addition, the Beaconfire study fails to recognize that the information required by the new Form LM-2 is not structurally complex or fundamentally different from the information that has been reported on the current form. The study, which notes problems encountered in the initial development of the Department's e.LORS program, also fails to take into account the Department's plans to leverage existing hardware and software components and to integrate the enhanced reporting system into the Department's existing infrastructure.

In revising its estimates of the likely cost of compliance with this rule, and in particular of compliance with the requirement that labor organizations file the Form LM-2 electronically, the Department carefully considered the information in the record regarding the existing capabilities of labor organizations. The AFL-CIO submitted survey data from its affiliates that suggests: 12.5% of local unions do not use computer accounting software; 21% of national and international unions and 33% of local unions would need new hardware; 62% of national and international unions and 75% of local unions would need new or upgraded software; and 14% of all unions said it would be impossible to expand the recordkeeping capacity of their current accounting systems to accommodate the additional data required by the proposed rule. The AFL-CIO survey also found that all national and international unions maintain their accounting data on in-house computer systems – but many of those systems are incapable of interfacing with the Department's software. Information submitted by the AFL-CIO also suggests, however, that: 79% of national and international unions and 67% of local unions will not need any new computer hardware; 38% of national and international unions and 25% of local unions will not need any new or upgraded computer software; and 86% can expand their current accounting systems to include the additional fields to accommodate functional reporting. Moreover, raising

the Form LM-2 filing threshold to $250,000 will enable 501 of the smallest filers, and those most likely to have software and hardware issues, to file the less burdensome Form LM-3. Further, as identified in the technical feasibility study performed by SRA, the Department is committed to developing reporting software for LM-2 filers that is compatible with the major export formats available in commercial, off-the-shelf accounting software. Finally, in the event that a labor organization encounters severe difficulties, the hardship exemption will be available for its use.

One union noted that it is going to be very difficult and maybe impossible for unions using a commercial off-the-shelf bookkeeping system (Quickbooks, Peachtree, etc.) to find a way to incorporate these details into their accounting databases. Almost all unions, it observed, will have to do special programming to find a way to do this. For the integrity of all the other accounting functions, the system must show the payee of the check (*e.g.*, American Express), but for the revised Form LM-2 the system will have to ignore that vendor and instead insert the names of the hotels, airlines, restaurants, etc. Finally, one union asserted that the Department's burden estimates are completely mistaken, and are based on alleged efficiencies to be gained from using software that the Department purports will seamlessly export financial data. In its view, it is impossible to determine which, if any, financial software packages will be compatible with the Department's software. There is no way, in its opinion, to comment meaningfully on the burden associated with the proposed rule without knowing how the software will work.

In light of all of these concerns, the Department reassessed its estimate of the burden and cost of complying with this revision of Form LM-2 and revised its estimate significantly upward. The Department has never contended that the changes would be without cost; the real question is

whether the increase in cost, once it is accurately measured, is justified by the increased benefits to union members. The Department has concluded, on balance, that technological advances have made it possible to provide the level of detail necessary for union members to have a more accurate picture of their union's financial condition and operations without imposing an unwarranted burden on reporting unions.

OLMS staff who review the reports filed and provide compliance assistance to unions have found that a majority of unions required to file Form LM-2 use computerized recordkeeping systems and have embraced the technology necessary to provide reports in electronic form. Several OLMS field offices report that even smaller unions that file Form LM-3 reports keep electronic books. The development of electronic software that will permit unions that keep their records electronically to import data from their programs to the Form LM-2 software should reduce the burden of reporting financial information with the specificity required by the final rule. While labor organizations have not previously been required to report all of this information, they have been required to make judgments regarding the appropriate characterization of disbursements in order to report those disbursements by category in the current form. Once the necessary adjustments have been made to electronic recordkeeping systems, no additional burden will be entailed by the need to make similar judgments with respect to fewer categories. Labor organizations that do not currently maintain electronic books, or that use accounting software that proves incompatible with the software developed by the Department, will experience an increased burden.

The Department has given serious consideration to the comments suggesting that the Department employ a pilot program before implementing a final rule or allow a delayed phase-in of the electronic reporting requirement. As explained (and further elaborated below), the Department's final rule builds upon the existing technology used by large and small businesses, labor unions, and other organizations to manage their finances. This technology has been available for several years and is used by many individuals to manage their family finances. As discussed elsewhere, the changes that need to be made by unions in their bookkeeping and accounting practices are incremental ones. The Department believes that most unions' existing financial software will accommodate the minimal changes required to comply with the rule. For data entry purposes, the only changes required will be the modification of the categories and fields to chart the union's accounts in a way that tracks the reporting categories. While the Department acknowledges that it will take the individuals responsible for tracking each union's financial matters some time to familiarize themselves with the instructions in order to modify categories, the actual time required to add the modified accounts to the tracking software will be nominal (from a few days to a week or more). Similarly, as discussed below, there is no apparent obstacle for unions to comply with the actual electronic submission of the information to the Department, an obligation that no union will have to meet until about 18 months after the publication of the final rule.

After considering the comments regarding implementation, the Department has chosen to delay the effective date of the rule to provide additional time for all labor organizations to make the adjustments necessary to record the information required. The Department believes that a pilot program is unnecessary. If the technology was not mature or the rule was introducing a concept

or requirement unfamiliar to unions, a pilot program might have served a useful purpose. The rule, however, relies on mature technology that is in common use among unions, businesses, and other organizations. The Department's investigative and audit experience reflects that unions are well experienced in tracking receipts and disbursements and reporting this information to members. Unions also have demonstrated considerable proficiency in using software to obtain these results.

For similar reasons, the Department believes it unnecessary to phase-in the new rule. As discussed, the Department does not believe that unions will encounter significant problems in revising their current bookkeeping and accounting procedures to meet the reporting requirements. And, to the extent unions are concerned about the actual submission of the data to the Labor Department, that will not occur until about 18 months after this rule issues (and then only for unions that have fiscal years beginning on January 1, 2004). Moreover, the rule has a built-in "phase-in" component that will allow for adjustments to be made, if and when problems arise. Because each labor organization's filing date is dependent on its chosen fiscal year, the filing of annual financial reports is staggered throughout the year.

In the event that any labor organization encounters serious difficulties with electronic filing, the hardship exemption will be available. The Department proposed a hardship exemption modeled after the procedures used by the SEC (17 CFR 232.201-202) and invited comments regarding whether the hardship exemption procedures are appropriate and whether there are any alternative procedures that might better address legitimate problems. International unions commented that the hardship exemption should be broadened to permit a reasonable phase-in period and that

smaller Form LM-2 filers be given permanent exemptions because of the burden and cost of electronic filing. Trade associations, on the other hand, argue that hardship exemptions should be narrowly limited and that labor organizations should be required to affirmatively prove hardship. Some commenters asked for clarification of the standards to be used when evaluating hardship claims. An attorney for a local union expressed concerns over the possible criminalization of innocent errors given the present lack of clear guidance on the proposed rule. One association commenter suggested that individual union members be permitted to appeal the grant of an exemption to their union.

The Department has decided to retain the hardship exemption and not to attempt to define with more particularity the circumstances in which it might be available. The exemption was left deliberately broad in order to permit accommodation of a wide range of variable situations. Moreover, the Department is unaware of any problem experienced by the SEC in using a similar formulation. If, however, unions have serious difficulty with electronic filing, the hardship exemption presents a fail-safe option for any reporting labor organization that needs it. With respect to the suggestion that a union member be allowed to challenge his or her union's exercise of the hardship exemption, the Department does not believe that such an appeal would be practical. Exemptions will be granted only upon a proper showing of need by the union and the exemption will be only temporary. As noted above, the concerns expressed about "criminalization" of innocent mistakes are misplaced because sanctions are available only for willful violations and thus depend upon intentional or reckless actions by responsible officers.

Finally, the Department continues to be fully committed to providing extensive compliance assistance at all stages of implementation. OLMS is developing compliance assistance materials outlining and explaining the changes to Form LM-2 and new Form T-1 and will present seminars and workshops advising union officers of the new reporting requirements. Contemporaneously with the publication of this rule, the Department is making available a Data Specifications Document that will enable the unions' staffs to prepare their bookkeeping systems in order to submit their reports electronically to the Department. If unions do not complete this interface, they will still be able to use the Form LM-2 software by the "cut and paste" method or by keying information directly into the electronic form. The Form LM-2 software will be available to download from the OLMS website at www.olms.dol.gov well before any labor organization will have to use it to file their reports, which will give the Department plenty of time to conduct compliance assistance and answer questions posed by the filing community.

The Department's extensive compliance assistance will include some or all of the following actions:

- Mass mailings to all reporting unions explaining the final rule and the effective date.
- Briefings for national/international unions, including meetings with national/international secretary-treasurers and their staffs and follow-up training sessions.
- Training OLMS staff on the new forms software and how to respond to inquiries from users.

- Establishing and publicizing a toll-free telephone number for software trouble-shooting.
- Maintaining a help desk with a toll-free telephone number and a dedicated email address for handling reporting inquiries.
- Development of users' guides for the new forms software.
- Development of Powerpoint briefings on the new forms software.
- Presentation of Powerpoint briefings by OLMS field offices in compliance assistance sessions with filers.
- Establishing a section on the OLMS website devoted to the revised Form LM-2 and making regular updates to it.
- Developing a "list serve" system to send email messages to unions, accountants, union members, and other interested individuals to provide up-to-the-minute information to assist in meeting the reporting requirements for the revised Form LM-2.
- Developing guidance to assist unions to configure off-the-shelf software to best capture the information needed to provide the data required for submitting the LM-2 and T-1 reports.

I. Effective Date

The Department proposed to make the use of the revised Form LM-2 and the new Form T-1 mandatory for reports for fiscal years commencing after the publication of the final rule. The

Department specifically invited comments concerning whether one year is an appropriate time period before labor organizations are required to use the new forms and whether labor organizations should be required to use the revised form to report information for a fiscal year that begins within 30 days of the date that a final rule is issued. One commenter said the effective date was appropriate observing that "[t]he proposed electronic filing procedures and effective dates strike a reasonable balance between limiting reporting burdens and increasing members' access to important information." Two other comments from organizations proposed that the effective date should be even earlier. These commenters indicated that while the new rule would require additional reporting burdens, the essential information to be reported remained unchanged. These commenters also expressed concern that unions would file the new forms late as many unions do with the current forms.

The majority of the comments specifically dealing with the rule's effective date opposed the proposed effective date saying that it was too soon. The commenters, most of whom were labor organizations, argued that the final rule should not be imposed until the software that will be provided by the Department is tested, implemented and fully operational. Several unions suggested that the effective date be delayed six months to two years. Some commenters said that given the Department's experience with e.LORS and the SEC's experience with its reporting system, a delay of two to four years before full implementation was more realistic. Other commenters suggested that the Department's software be subject to a separate review and comment process after it is issued.

The Department continues to believe that an earlier or immediate effective date would not be appropriate for a proposed rule of this magnitude. Some interim period will be needed for unions to adapt their recordkeeping practices to the new requirements. Similarly, there will be a later need for the Department and labor organizations to test and implement the reporting software that will be provided by the Department. The aim of the Department is to balance some reasonable amount of time that unions will need to adapt to the new reporting requirements and the members' immediate interest in knowing how their dues money is spent. This member interest is reflected in the numerous comments from members indicating general support for the proposed changes and emphasizing the members' right to have information concerning their union.

In addressing unions' concerns, it is appropriate to sketch the tasks to be undertaken by unions to meet the requirements of the new reporting regime. The tasks involve two phases of preparation. First, filers will need to study and understand the new requirements, make adjustments to the union's recordkeeping system, and train staff. Second, filers that choose to take advantage of the electronic importation features of the Department's reporting software will need to create reports within their accounting systems that will be used to export their data to populate the reporting forms. As discussed in greater detail below, the first phase likely can be completed within a few weeks of the rule's publication and certainly by the effective date of the rule, whereas the second phase need not be completed until the form is filed, at the earliest, nearly 18 months after publication of this rule (and then only for unions that have fiscal years beginning on January 1, 2004).

The grace period of about three months is relevant to the first phase discussed above, which begins immediately upon publication of the final rule. The preamble, instructions and forms will be the authoritative source of information regarding the new reporting requirements. Union officials will use these documents to understand what is required of them. Additionally, the Department will provide substantial compliance assistance that will include an overview of the requirements, a comparison to the old requirements, guidance to assist unions to configure off-the-shelf software to best capture the information needed to provide the data required for submitting the LM-2 and T-1 reports, a tentative schedule of seminars for international, national, intermediate and local unions hosted throughout the country, an email list-serve to provide periodic updates to interested parties, web-based materials that include frequently asked questions, a description of the Form T-1 registration process, and other topics of interest to filers.

Once union officials understand the new reporting requirements it will be necessary to make some adjustments to their recordkeeping systems. Most changes will be very minor. The most crucial change involves the tracking of disbursements to ensure that each disbursement is allocated to the proper disbursement category with a descriptive purpose. Each union will track new disbursements according to the account classifications created by that union and classify them according to the disbursement categories of the revised Form LM-2. Some commenters asserted that this is a dramatic policy shift tantamount to imposing a new recordkeeping system, which would cause a significant burden, but this ignores the fact that unions have always been required to allocate each disbursement to one or more disbursement categories on the Form LM-2. For example, unions have always been required to allocate credit card payments to multiple categories of the Form LM-2 based upon the purposes of each charge. A single credit card

charge to a travel agent may include expenses that must be allocated to three or more different places on the Form LM-2. The Department has changed the categories but not the underlying method of allocating these disbursements. In fact, there actually fewer disbursement categories on the new form and the five new categories are thoroughly defined in the instructions to the form. After allocating the disbursement, they will enter a brief purpose for each transaction in a memo field. These sorts of operations should be easy to perform since such changes to the classification of transactions and the creation or modification of accounts are made on a week-to-week or day-to-day basis in the normal course of business. It may require some retraining to understand the new categories and the use of the memo field, but this is guidance that bookkeepers are accustomed to receiving. Nothing during this phase is particularly time consuming, difficult, or outside the common routine of individuals engaged in bookkeeping and accounting. In sum, the Department believes that Form LM-2 filers will be able to make any needed adjustments to their bookkeeping and data processing practices to capture and allocate transactions in the categories prescribed by the Form LM-2 and to later transmit such data without incurring an undue burden.

Addressing unions' additional concerns, it is the Department's position that neither the time spent by the SEC in the development of its Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system nor the time required for the Department to implement its e.LORS system provide appropriate paradigms for determining the time necessary to implement mandatory electronic filing of the Form LM-2. First, the phase-in of the mandatory electronic filing on the SEC's EDGAR system was completed on May 6, 1996, over seven years ago. *See* 61 FR 13544; http://www.sec.gov/info/edgar/regoverview.htm. Since then, technology has continued to

develop, building, in part, on experience gained from using systems like EDGAR, and computerized recordkeeping and communication have become more accessible and better understood. As the SEC itself commented, in implementing recent improvements:

> Recent technological advances, most notably the rapidly expanding use of the Internet, have led to unprecedented changes in the means available to corporations, government agencies, and the investing public to obtain and disseminate information. Today many companies, regardless of size, make information available to the public through Internet web sites. On those sites and through links from one web site to others, individuals may obtain a vast amount of information in a matter of seconds. Advanced data presentation methods using audio, video, and graphic and image material are now available through even the most inexpensive personal computers or laptops.

65 FR 24788-89.

Moreover, the EDGAR system is far more complex and multi-faceted than the filing of the one or two forms contemplated by this rule. In fact, EDGAR accommodates the filing of over 75 separate forms by a variety of different types of entities. *See* http://www.sec.gov/info/edgar/forms.htm#common. The fact that such a massive system could be implemented with a three-year phase-in period over seven years ago lends support to the

Department's assertion that the far simpler architecture required to permit similar organizations to file two forms, at most, can be implemented in much less time. In addition, the Department will be able to utilize both the architecture developed for e.LORS, as well as experience gained in developing and implementing that system, to facilitate the establishment of a system of mandatory electronic filing for the current Form LM-2. Although some commenters also pointed to delays in publication of recordkeeping rules by the Occupational Safety and Health Administration, those delays are irrelevant inasmuch as they were related to policy changes, not technical difficulties. *See* 68 FR 38601.

The Department continues to believe that labor organizations will have adequate time to conform to the revised forms and comply with the more detailed reporting requirements. As indicated above, unions will have a minimum of approximately 18 months before their first report on the new forms is due. During this time, they already will have made changes to their bookkeeping practices needed to capture the information that will be reported. Thus, the unions will be able to focus their efforts on training their staff in the new requirements of the actual reporting software. As the Department has acknowledged, there were some complications with the implementation of the previous e.LORS system. The Department has learned from this process. Building upon the existing infrastructure, the Department is employing more advanced technology in developing the reporting software than was the case in the initial e.LORS project. Similar software has proven efficient with other government agencies.

As discussed above, the Department has decided to delay the effective date of the final rule by postponing its application until unions begin their next fiscal year after December 31, 2003, *i.e.*,

about three months after publication of this rule. Approximately two thirds (2/3) of the reporting unions begin their fiscal year on January 1. The first report containing the information required under the new rule for these unions would be due on March 31, 2005. Labor organizations that use a fiscal year beginning on a date other than January 1 will have even more time to comply.

IV. Summary of Changes to the Proposal to Require Form T-1 Reporting for Trusts

The Department proposed to require all unions to report the assets, liabilities, receipts, and disbursements of all funds or organizations that are not wholly owned by the union, but that meet the statutory definition of a "trust in which a labor organization is interested," that have annual receipts of $200,000 or more and to which the labor organization contributes at least $10,000 during the reporting year on a new Form T-1 (Trust Annual Report) in order to fulfill the purpose of the statutory reporting requirements.

A "trust in which a labor organization is interested" is defined in Section 3(l) of the LMRDA (29 U.S.C. 402(l)) as follows:

> …a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary

purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

The Department sought comments on a number of issues relating to this new form, which are discussed below.

A. Who Should Be Required To File a Form T-1

1. Labor Organizations That File Forms LM-3 and LM-4

The Department proposed that all labor organizations, including smaller labor organizations eligible to file their labor organization annual financial report on Forms LM-3 and LM-4, as well as larger labor organizations required to file Form LM-2, would be required to file Form T-1 for any trust in which a labor organization is interested if the total annual receipts of the trust were at least $200,000 and to which the labor organization contributed at least $10,000, or to which $10,000 was contributed on behalf of the labor organization, during the reported year. The proposed Form T-1 is designed to require unions to report financial information about union funds that have been invested in such trusts, information that has not been disclosed under the current reporting regimen for unions. The proposed reporting scheme was established to discourage circumvention or evasion of the reporting requirements for such trusts, while imposing minimal burdens on labor organizations. The Department invited comments on whether this aspect of the Department's proposal strikes an appropriate balance between the need for transparency and any burden on labor organizations.

Numerous commenters expressed their views on the reporting burden that the proposal would entail. Some commenters discussed the likely impact on unions without substantial resources invested in covered trusts. A business/trade association asserted that the reporting burden on such unions would be significantly less than on unions with more substantial assets, given that the burden likely would be proportional to the size of a union's overall finances. The association also suggested that it might be appropriate to require smaller labor organizations, otherwise eligible to file their labor organization annual financial report on Forms LM-3 or LM-4, to file their annual reports on the more detailed Form LM-2 for any year in which such organizations meet the requirement for filing the Form T-1.

Many unions submitted comments that would except some unions from the Department's proposal. These commenters stated that unions, regardless of the size of their membership or their financial resources would have virtually the same responsibility and tasks, even though only a small number of the unions would have the staff or other resources to obtain, prepare, and file timely and accurate information on Form T-1.

Many commenters stressed the limited human resources available to some unions. These commenters observed that many unions have no clerical employees and must rely either on part-time officers or, in very many cases, unpaid members who volunteer their services after work hours. In the view of these commenters, very few of those officials and employees have the computer or accounting experience or training sufficient to readily process and submit the necessary financial information for the Form T-1 in electronic format.

Commenters stated that many labor organizations conduct and record their financial and other union affairs by hand and seldom have ready access to current-generation computers, software, and other electronic equipment. These commenters expressed concern that these organizations, which already often find it necessary to hire professional assistance to meet current reporting requirements, in many cases would be constrained further to hire and rely on computer, accounting, legal, and other consulting assistance to comply with the Department's Form T-1 proposal. Additionally, these commenters stated that such unions would find it necessary to expend significant amounts of their resources for training on how to meet their reporting obligations. The commenters further stated that, because there is a significant turnover of the organization's part-time and unpaid officials and employees, those costs may not only be a significant but also a recurring expense for small organizations. Commenters stated that many organizations would be faced with the dilemma of raising the dues of, or cutting services to, their members.

The Department has been persuaded that the relative size of a union, as measured by its overall finances, will affect its ability to comply with the proposed requirements relating to trusts in which the union has an interest. For this reason, the Department has decided to limit the requirement for filing Form T-1 to labor unions that have receipts of at least $250,000 per year, the same filing threshold that applies to organizations that must file their annual financial reports on Form LM-2. Accordingly, the Department's final rule excepts from the trust reporting requirement labor unions that are eligible to file Forms LM-3 and LM-4.

Because the proposed requirement that Form LM-3 and -4 filers file a Form T-1 for trusts in which they are interested was the only significant change proposed with respect to Forms LM-3 and LM-4, neither these forms nor the Instructions for them will be included in the appendix to this rule. In addition, a change will be made to the Instructions for Form LM-2 to make them consistent with the unchanged Instructions for Forms LM-3 and -4, which provide that the term "total annual receipts" includes receipts of any subsidiary organization, defined as

> . . . any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization.

While an entity that meets the definition of a subsidiary will also be a trust in which the union is interested, the assets of which would not normally be included in "total annual receipts" of the reporting union, an exception to the normal rule will be added to the Instructions to make clear that the assets of a trust should not be included *unless* the trust is also a subsidiary, as defined above. The NPRM pointed out that one alternative to the proposed criteria for filing a Form T-1 would be to require a report for any entity that is dominated or controlled to such a degree that assets, liabilities, receipts and disbursements of the entity effectively are those of the union itself. Commenters were specifically invited to comment on the fact that assets and receipts of such an entity "would be reportable as assets and receipts of the union itself (rather than assets of an

organization in which the union has an interest)" and that the addition of such amounts might require a union to file a Form LM-2 rather than a Form LM-3 or LM-4. *See* 67 FR 79285. Although, as explained in Section IV. A. 3, the Department has rejected reporting based on "single entity" status in favor of the statutory definition of a trust in which a labor organization is interested, it is appropriate to retain the existing inclusion of the receipts of a subsidiary (which is more clearly and more narrowly defined than a single entity) in the receipts of a reporting union for the sole purpose of deciding whether the union must file a Form LM-2. Otherwise, removing the requirement for unions with annual receipts of $250,000 or less to file a report regarding trusts in which they are interested would permit unions to allocate assets to a wholly owned, controlled and financed entity and avoid even the reporting requirements imposed with respect to such entities before these reforms.

2. Other Exemptions

The Department originally proposed four express exemptions to the Form T-1 Trust Annual Report: (1) where an organization makes freely available, and specifies the location of, an audit of the trust pursuant to 29 U.S.C. 186(c)(5)(B); (2) where an organization files publicly available reports about the trust as a Political Action Committee (PAC) with a state or federal agency; (3) where a report about the trust as a political organization is filed with the Internal Revenue Service pursuant to 26 U.S.C. 527; or (4) where the trust is required to file an annual report pursuant to ERISA (29 U.S.C. 1023). The Department invited comments concerning whether the proposed Form T-1 procedures – including the enumerated exemptions to Form T-1 filing – were appropriate given the facts and circumstances of current union reporting.

Many labor organizations supported the proposed Form T-1 exemptions as a reasonable approach that provides valuable financial disclosure, while avoiding needless duplication of effort. Other unions, apparently either mistaken about, or unaware of, the parameters of the exemptions, criticized the Form T-1 on the ground that many trusts are heavily regulated by ERISA (and other federal laws) and are already required to file similar financial reports with government agencies. In the Department's view, these comments are best read to provide implicit support for the proposed exemptions. Several commenters suggested that the Department extend the Form T-1 exemption to any entity willing to be audited by an independent certified public accountant and willing to make that audit publicly available, irrespective of whether the trust currently files an audit or report with a government agency. Finally, several trade associations suggested that the Form T-1 permit no exemptions at all. These organizations stated that, at a minimum, unions be required to append to their Form LM-2 filings the pertinent audit or annual report filed with the other government agency.

In response to these comments, the Department has continued to provide four exceptions to the Form T-1 requirements: 1) a PAC fund, if publicly available reports on the PAC's funds are filed with federal or state agencies; 2) any political organization for which reports are filed with the IRS under 26 U.S.C. 527; 3) employee benefit plans filing a complete and timely report under ERISA; and 4) any covered trust or fund for which an independent audit has been conducted in accordance with standards prescribed in the final rule. For the first three categories, the exception is complete. No Form T-1 is required. For the fourth category, a union must file the Form T-1, but can file the independent audit in lieu of providing the financial information

otherwise required by Form T-1. The audit will be required to meet either the requirements of 29 CFR 2520.103-1 *et seq.* (relating to annual reports and financial statements required to be filed under ERISA) or the standards described in detail in the Instructions to Form T-1.

The standards prescribed in the Form T-1 Instructions, generally, require that the audit be performed by an independent qualified public accountant who, after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with accepted accounting principles. Notes to the financial statements included in the audit must disclose, for the preceding twelve month period: losses, shortages, or other discrepancies in the trust's finances; the acquisition or disposition of assets, other than by purchase or sale; liabilities and loans liquidated, reduced, or written off without the disbursement of cash; and loans made to union officers or employees. The audit must be accompanied by schedules that disclose, for the preceding twelve month period: a statement of the assets and liabilities of the trust, valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; a statement of trust receipts and disbursements; and a list of all entities, including the name and description of the entity, with which the trust conducted $10,000 or more of commerce during the reporting period, as well as the aggregated total of all receipts/disbursements with each such entity during the reporting period. These standards overlap partially with the standards required by the ERISA rule, with changes necessary to serve the particular needs of the Department in administering the "interested trust" provisions of the LMRDA, as discussed throughout this section of the preamble. *See generally* AICPA,

Professional Standards, Special Reports, AU §§ 600 and 623*;* FASB, *FAS 117, Final Statements for Not-for-Profit Organizations, ¶¶ 45, 47, 63.*

The new audit alternative is aimed at promoting disclosure while avoiding duplication for trusts that are already subject to an independent audit. The audit option enables unions to avoid reporting the detailed financial information on a Form T-1 if they are already receiving an audit that meets the specifications set forth above, by simply filing a copy of such an audit along with the first page of a Form T-1, which provides identifying information. The criteria set forth above are in line with standard business practices (*id.*) and provide the kind of information in which union members who submitted comments on this issue demonstrated an interest. The information required in such an audit, however, is somewhat more general than that otherwise required on a Form T-1. For example, an audit need not specify the purpose for disbursements of $10,000 or more by the trust, but need only list the identities of those with whom the trust engaged in $10,000 transactions.

As discussed earlier, no union is required to file an audit for a covered trust. Instead, the union may choose to meet the reporting requirement by submitting either: (1) a statement that a qualifying report (as identified above in the categories listed) has been filed with a separate government agency; (2) a copy of an independent audit meeting the standards prescribed above; or (3) a completed T-1 Form. These requirements should not be read as diminishing or affecting in any way a trust's disclosure obligations under other applicable law including, but not limited to, ERISA, state and federal reporting laws governing PAC funds, IRS regulations governing

political organizations, and Section 302(c) of the Labor Management Relations Act (LMRA), 29 U.S.C. 186(c).

The audit process provides a valuable qualitative check on the entity's finances by an independent examiner. Among other regulatory schemes, the SEC, as noted above, recognizes the important, rigorous role independent audits serve in its regulation of public companies. The Department recognizes that the audit option may not provide the same detail as the Form T-1, but in this context the need for itemization is less significant than it is in reporting the union's non-trust assets because the Form T-1 does not apply to disbursements by labor organizations directly. The Form LM-2 already captures specific union disbursements and accounts payable to trusts. The Form T-1 is designed to provide information about an entity created by the labor organization, or trustees or members of the governing body of which are selected or appointed by the labor organization, a primary purpose of which is to provide benefits for the labor organization's members or their beneficiaries.

Many union members recommended generally greater scrutiny of joint employer-union funds authorized under the LMRA. Moreover, while many union members were critical of the current state of joint funds disclosure and sought greater Department oversight of these funds, these comments can be read equally as supporting the requirements that unions specify where the audit is available. At least one union member stated that the critical problem was that requests for information about these funds were ignored – not that the substance of the information provided was insufficient. Similar reasoning supports extending the opportunity to reporting labor organizations to file a qualifying audit in place of a Form T-1 for any trust. The Department

believes, however, that such audits should be filed with the Department, rather than maintained separately from the labor organization's other financial information. Their filing with the Department will promote transparency and accountability by allowing union members to access all trust information quickly and easily in one location.

3. Form T-1 Reporting Threshold

The Department proposed a reporting threshold based on the trust's annual receipts and a union's annual contributions to the trust (or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party). The Department proposed $200,000 in annual receipts as the trust threshold and $10,000 as the threshold for a union's contributions to the trust. Although most of the comments received focused on the size of a labor organization's contribution, rather than the size of a reportable trust, the Department has decided to raise the reporting threshold to require unions to report only trusts with annual receipts of $250,000 or more, consistent with the increase in the reporting threshold for the Form LM-2.

One comment suggested that in some circumstances the $10,000 threshold for labor organization contributions to a trust was too high. That comment urged the Department to modify the proposal so that a union that contributes either $10,000 or 10% of its total annual receipts, whichever is less, would be required to file Form T-1. The comment reasoned that amounts of less than $10,000 may be significant, relative to the organizations overall finances, for some unions, and that members of such unions should have the benefit of knowing how their money is

being spent. As noted above, the Department invited comments about the impact that the proposed trust reporting requirement would have on unions with relatively small assets. The commenters have persuaded the Department that some smaller unions could encounter significant and recurring difficulties in complying with the Department's proposal. The Department's decision to limit the requirement for filing Form T-1 to those unions with annual receipts of at least $250,000 has rendered moot the suggestion to adopt an alternative Form T-1 filing threshold for union contributions of the lesser of $10,000 or 10% of the union's total annual receipts.

The Department recognizes that amounts less than $10,000 may be comparatively more significant to some unions. However, the Department believes that the value of such information to union members is outweighed by the burden such reporting could have on unions without a professional or even full-time staff. Such unions also may have comparatively more difficulty in obtaining the detailed information and preparing the detailed trust report on Form T-1, especially in electronic format.

A number of commenters expressed the view that the $10,000 union contribution threshold for filing Form T-1 was too low and recommended various alternatives:

- Two comments suggested that the $10,000 threshold served a limited purpose because a benefit program would readily meet that threshold; the comments cited as an example the fact that a union with as few as 49 members who work full-time and contribute $.10

per hour to a benefit program would meet the threshold. A third comment suggested that the union annual contribution threshold be raised to $25,000.

- Two comments stated that the Department's proposal would require a union to file detailed reports on Form T-1 regarding trusts in which a union may have only a 5% ownership interest. Those comments urged the Department to revise the proposal so that the threshold was based on ownership or control of at least 50% of the trust.

- For similar reasons, three comments suggested that a threshold of 20% or 25% or some other percentage of the receipts of the trust would be a better measure of the union's relationship with the trust that would permit the union to obtain details of the trust's financial operations to be reported on the Form T-1.

The Department has not been persuaded that these comments provide a sufficiently balanced and workable alternative to the Department's proposal. The $10,000 threshold for union contributions proposed by the Department represents, in the Department's view, the most appropriate compromise between an amount that is sufficiently high so that an undue reporting burden is not imposed on unions with limited finances and an amount that is sufficiently low so that trusts will be reported if they receive contributions equal to a significant proportion of the

reporting union's other financial affairs. Thus, a threshold contribution of $25,000 seems excessively high, especially in relation to the other financial affairs of labor organizations. Setting the threshold at this level would deny members information about financial transactions involving a significant amount of money relative to the union's overall finances and other reportable financial transactions.

Basing a union's obligation to file a trust report on the percentage of the union's ownership or control of the trust also does not appear to be a workable or appropriate approach. Union ownership and control in the context of a union's participation in a trust that provides benefits to the union membership are very difficult concepts to quantify. Even if percentages of ownership or control were susceptible to reasonably precise calculations, in view of the many variables present in these situations, there is no readily apparent figure that would ensure the cooperation of the various trusts.

In any event, it seems unlikely that significant ownership or control need be vested in a single reporting labor organization in order to ensure trust cooperation so that the labor organization may obtain trust information sufficient for filing a Form T-1. A trust in which a labor organization is interested is defined in section 3(l) of the LMRDA to mean an organization that was created or established by a labor organization or one or more of the members of the governing body of which is selected or appointed by a labor organization. Thus, by definition one or more labor organizations probably will have significant involvement in the affairs of the trust. As a result, the Department anticipates that in most instances the reporting union, either by itself or in combination with other reporting unions, in practice will exercise sufficient influence

to require or persuade the trust to provide the information necessary to file a Form T-1. It seems likely that in the great preponderance of circumstances it would not be necessary for a reporting union to have anything approaching 50% ownership or control of the trust in order to obtain the necessary information from the trust to prepare and file Form T-1.

The Department disagrees with the suggestion that a union's reporting threshold be based on the union's share of a particular trust's annual receipts. Under this approach, for example, a union would have to file a Form T-1 only if the union's per annum contribution reflects 20% or 25% of the total contributions received by the trust during this period. This approach would operate to except from reporting information relating to substantial contributions by a union, even though such contributions could represent the primary investment of the union. Moreover, this approach would deny members information, given the purpose of the trust, that is uniquely important to them as union members, even though the contributions of their particular union represents only a relatively small fraction of the contributions received by the trust. A formula setting the threshold at 20% or 25% of the annual receipts of the trust might exclude from the reporting requirement those large trusts that have numerous participating unions. Thus, even though the trust's entire contributions come from unions, no information would be disclosed by this trust unless a contributing union exceeds the suggested percentage of total contributions. For example, if a union need only file a Form T-1 for a trust if it contributes 20% of the trust's annual receipts, no disclosure will be required for even the smallest reportable trust, *i.e.*, a trust with annual receipts of $250,000, unless a single union contributes at least $50,000 annually to the trust, even though the trust receives all or most of its funding from a group of six or more unions.

The Department recognizes that where one or more labor organizations participate in a trust and fewer than all such labor organizations meet the annual contribution threshold that would trigger the obligations to file Form T-1 under the Department's proposal, all labor organizations that are required to file Form T-1 will submit virtually the same report. Members of the other participating labor organizations that do not meet the annual contribution threshold and that are not required to file Form T-1 would have access to those trust reports because the reports are public information under section 205 of the LMRDA, 29 U.S.C. 435. However, the Department believes that it is impractical to restrict the reporting to a single labor organization. Although it might be possible to impose the reporting obligation only on the labor organization that makes the largest contribution to the trust, this rule might be difficult to apply unless trusts were mandated to maintain an easily accessible and dynamic report of contributions by each participant in the trust, a condition that the Department is unable to impose. Allowing self-selection among unions also would be a possible option, but there is no guarantee that this would be workable. There is no mechanism by which this obligation could be enforced, and a particular union's failure to abide by any voluntary arrangement would deny members of several unions information to which they are entitled. Thus, in the Department's view, this alternative does not ensure that members would receive information about their union's trust holdings on a regular, predictable, and enforceable basis.

The Department also sought comments on an alternative "single entity" test to identify those funds or other organizations for which a union should report assets, liabilities, receipts and disbursements. The NPRM defined a "single entity" as one that is "dominated or controlled by the labor organization to such a degree that assets, liabilities, receipts and disbursements of the

entity effectively are those of the union itself." *Id.* The test focuses on such factors as commonality of ownership, directors and/or officers, exercise of control, personnel policies, and operations. If a related organization and the union are effectively a "single entity," then the union would be required to include the related organization's financial information as part of the union's own finances on the appropriate LM form. The Department invited comments on the following specific issues: (i) whether requiring a union to report financial data for any organization qualifying as a "single entity" would provide better information to interested union members than the current requirements for reporting trusts in which the union has an interest; (ii) whether a union could easily identify organizations that satisfy the "single entity" test; and (iii) whether the proposed "single entity" rule may affect some smaller unions if the combined assets and receipts of the union and the related organization exceed the $200,000 threshold for requiring use of the proposed Form LM-2.

The Department received very few comments addressing the "single entity" test, all of which opposed the proposal. One comment criticized the proposed test because it would be more costly to enforce and less effective than the current "bright-line" standard (*i.e.*, the $10,000 contribution threshold). The comment suggested that a union could simply deny that a related organization qualifies as a deemed "single entity" and not disclose the financial information; interested union members would then have to litigate the issue. According to the commenter, the relationship between the union and the other organization might not be apparent to the union members and, as a consequence, members would have no reason to make inquiries about the relationship between the organizations. With respect to the impact on smaller unions, the comment noted that the proposal might encourage those unions to under-report assets to avoid the Form LM-2

threshold. The comment suggested lowering the Form LM-2 threshold or importing the proposed Form LM-2 changes into the Form LM-3 if the Department is concerned about under-reporting. Another comment rejected the Department's view that the related organization's finances must be combined with the union's finances for all purposes. The comment believed "single entity" reporting only requires the union to report the related organization's finances, but not to combine the two organizations' income to determine the applicable LM form. Determining the LM Form filing threshold on the combined receipts of both entities is "absurd on its face," stated the comment, because a "single entity" finding recognizes two discrete legal entities and is thus unlike a finding that an organization is a "subsidiary" of a labor organization under the current Form LM-2. A third comment broadly rejected the "single entity" test because it would create "misleading" information about local unions and generate "useless" financial data.

After consideration of the comments received, the Department has decided against adopting the proposed "single entity" test. The Department agrees that the test is less effective than other criteria for determining whether a union is responsible for reporting financial information from related organizations. The criticisms underscore the difficulties faced by union members in obtaining financial information from a union: a union could conceal its relationship with the related organization, which would deny interested union members the information necessary for initiating inquiries; or a union could refuse to disclose information on the basis that the organization does not meet the standard for a "single entity" relationship. In either case, the Department would have to resort to litigation to obtain the withheld financial information. The "single entity" test does not reduce these obstacles. Moreover, the Department acknowledges

that the test may be difficult to apply in some cases. The test requires close scrutiny of the related organization to determine whether a sufficient commonality of personnel, policies and operations exists to deem the union and the organization a "single entity." Union members may encounter significant difficulties in obtaining the necessary information to make the comparison, which could reduce the incentive to conduct such inquiries. Even a fully informed investigation may not produce a conclusive answer because reasonable minds could differ about the relationship between the organizations. In contrast, a "bright line" standard based on a specified dollar threshold is unambiguous and easy to apply. The threshold determines whether the union's "interest" in another entity is sufficient to require its disclosure. This approach imposes no significant burden on interested union members.

B. Information Required For A Trust in Which a Labor Organization is Interested

The Department proposed requiring labor organizations to report, on a Form T-1, itemized receipts and disbursements of a covered trust. The comments on this proposal, in large part, mirrored those with respect to itemization on Form LM-2. Several commenters suggested that itemization was likely to significantly burden affected unions with little corresponding benefit. Labor organizations, they argued, do not currently have accounting systems for this type of itemization and the number of entries alone for large trusts would be overwhelming. Other commenters supported itemization of Form T-1 receipts and disbursements. One organization cited the recent Washington Teachers' Union embezzlement case as an example of financial corruption that might have been prevented by Form T-1 itemization. Commenters noted that the Form T-1 included a schedule to report officer and employee salaries but comments that argued

generally that the form was too burdensome did not specifically address that schedule. After carefully considering the comments, the Department continues to believe that unions should provide their members with financial information about its significant financial investments with covered trusts. However, the final rule reduces the burden of reporting information about such trusts.

As is the case with respect to itemization on Form LM-2, the Department believes the benefits of disclosure to union members will outweigh any corresponding burdens upon union officials. Union members have expressed through their comments serious concern over union dues that are deposited into trusts and joint ventures and unaccounted for thereafter. Large trusts will be required to itemize numerous entries. These trusts, however, will have available to them the same bookkeeping and accounting software available to unions. Thus, for the reasons discussed with respect to the Form LM-2, no undue burden is imposed upon covered trusts in compiling the information needed for the union to file the Form T-1. Moreover, there has been no suggestion that covered trusts are ill equipped to comply with the bookkeeping or reporting requirements established by the final rule. Moreover, the trust information will be readily accessible to any union member with access to the Internet. In sum, unions have not asserted that a trust in which a union is interested will encounter any significant burden in connection with the collection of information needed to complete a Form T-1, and none is apparent. The unions also have failed to demonstrate that they will encounter any significant burden in providing the information to the Department, a burden that, in any event, is less significant than the preparation of the Form LM-2. Unlike the Form T-1, the Form LM-2 imposes on the

reporting union the direct responsibility to capture the information needed to prepare the required report with this Department.

Many commenters opposed the specific threshold of $10,000 for itemized receipts or disbursements on the Form T-1. Again, these comments were similar to those on thresholds in Form LM-2. Some commenters suggested a greater dollar figure such as $25,000 (possibly indexed to inflation) or a percentage of the total receipts or disbursements of the trust such as 20% or 25%. Commenters asserted that the use of a percentage threshold would be more consistent with the Department's current regulation of employee benefit plans. One organization recommended a disjunctive threshold for itemization of $10,000 *or* 10%, the latter to capture those instances where a union contributes less than $10,000 but still controls a significant portion of the trust. Finally, one union member recommended that every disbursement be itemized regardless of size.

As discussed in greater detail above, the Department continues to believe that $10,000 is the appropriate threshold for itemization. This amount, in the Department's view, represents a substantial transaction that would be of interest to union members. For that same reason, a percentage threshold would be inappropriate, as it would deny information to members of unions with considerable assets about substantial transactions, denying them information about transactions that might have s significant impact on the union's finances. Conversely, the Department believes that the other proposals to eliminate any threshold, or to replace it with a lower dollar figure or a percentage of the assets of the union (or the trust) (which could operate to require itemization of transactions of less than $10,000) would impose an unwarranted burden

on the unions without corresponding benefit to the members, given the unlikely impact on the overall financial health of most unions of transactions that are between $10,000 and a de minimis amount. In the Department's view, the difference between the reporting threshold for itemized transactions under the Form LM-2 ($5,000) and the threshold under Form T-1 ($10,000) is appropriate because the finances of a trust are less likely to directly impact union members than the expenditures by the union itself.

One commenter questioned the wisdom of setting a $250 reporting threshold under Schedule 4 for loans to officers, employees, or members. The commenter stated that such threshold would require the reporting of routine transactions, including relatively small credit card balances and most loans from a credit union trust. In response, the Department has decided to eliminate this Schedule from the Form T-1, and, in its place, require the union to state whether the trust has loaned money to officers or employees of the union during the reporting period on terms that are substantially more favorable than terms available to others, or has forgiven loans to officers or employees of the union during the reporting period. If the union answers in the affirmative, information about the loan must be provided in Item 25 (Additional Information). This information will be beneficial to union members without burdening every reporting union.

Several labor organizations raised privacy challenges to the Form T-1 itemization requirement, specifically that disclosing the name and address of individuals receiving trust funds (as well as the date, purpose, and amount of the transfer) would be unwise and likely unlawful under federal privacy laws. Some commenters recommended aggregating all disbursement amounts. While aggregating all disbursements would substantially reduce the amount and quality of the

information reported on a Form T-1, the Department is sympathetic to the concerns that the disclosure of information in a Form T-1, which will be available on the Internet, should not result in the disclosure of private information regarding individuals. Accordingly, the Department has concluded that labor organizations will be permitted to use a procedure similar to that used with respect to sensitive information reported on the Form LM-2 itself. If the labor organization concludes that disclosure of specific information about a trust's disbursements to, or receipts from, individuals will result in the inappropriate disclosure of private information regarding such individuals, the disbursement or receipt may be aggregated with, and reported only as a part of, the total amount of disbursements and receipts below the itemized reporting threshold. The labor organization that elects to use this procedure, however, must indicate on the Form T-1 that it has done so and the use of this procedure will constitute "just cause" for union members to examine more specific information regarding these transactions, unless disclosure is prohibited by law or would endanger the health or safety of an individual.

C. Deadline for Filing a Form T-1

Comments from two unions stated that requiring the Form T-1 to be filed within ninety days after a trust's fiscal year would not provide sufficient time for labor organizations to take all necessary steps for filing Form T-1, including: determining whether the filing threshold is met; communicating with the trust; communicating with other participating labor organizations; obtaining the necessary information; and preparing and filing the Form T-1. A comment from a third union stated that the governing rules of its national union require its books and LM report to be audited and filed with the national union before the deadline for filing the local union's LM

form and that requiring Form T-1 to be filed at the same time would make it even more difficult for locals of that national to meet their reporting deadline for their annual reports.

The Department's intention in permitting a union to file its Form T-1 within ninety days after the trust's fiscal year was to ease the burden for both the trust and the union. The Department anticipates that a trust more readily will be able to provide necessary information to the reporting labor organization at the conclusion of the trust's fiscal year and that a labor organization will have correspondingly less difficulty in obtaining information at that time.

The Department recognizes that reporting labor organizations must obtain this information from their trusts, but most of the steps outlined by the commenters above should take little time. A labor organization should readily be able to determine from its own records whether the labor organization's own contributions to the trust equaled or exceeded $10,000 annually. A labor organization is likely to know from past audits or other information provided by the trust whether the trust's annual receipts approximate $250,000 or more, and, whether or not the labor organization has that information, the labor organization's request to the trust for information necessary for filing Form T-1 could simply be conditioned on the trust having that level of annual receipts. It should not be necessary to seek any information or assistance from other unions that participate in the trust. Even the assembly of information by the trust and the subsequent preparation of Form T-1 by union officials should not require substantial expenditures of time, inasmuch as the Form T-1 requires only relatively basic information regarding receipts, disbursements and payments to officers and employees of the trust. The time

and difficulty a labor organization may experience in obtaining and filing information on Form T-1 is thus minimized.

Two commenters, a union and an accountant, observed that reporting unions may not control a trust for which information must be filed on Form T-1 and that it may be difficult for some unions to obtain the necessary information from trusts. Though the trusts may have legal identities separate from reporting unions, the Department anticipates that in many and probably most instances the reporting union either by itself or in combination with other reporting unions will in practice exercise sufficient influence to require or persuade the trust to provide the necessary information. In this connection, if the union's members request further information about a particular trust or further details about a reported transaction, the union must disclose to the member any relevant information within its possession at the time of the inquiry and make a good faith effort to obtain additional information from the trust.

The Department recognizes that there may be some instances in which a trust will not fully cooperate in providing timely information to the reporting union. However, the Department expects that, in those infrequent instances, the reporting union officials will be able to demonstrate that they made a good-faith effort to obtain timely information from the trust. In such situations, the Department is prepared to exercise any available investigative and other authority to assist the reporting union to obtain the necessary information. One commenter, an accountant, suggested that some of the information required to be reported on Form T-1 may be reported by the trusts under other federal reporting requirements with later reporting deadlines and that unions that file reports regarding those trusts should be permitted to use those later

deadlines. The Department concludes that a rule with such uncertain deadlines would be difficult to administer and would not be easily ascertained and applied by all parties, including labor organizations, their members, the trusts, the Department, and the public.

One commenter, a union business representative, urged the Department to include a procedure for granting extensions of time to labor organizations for filing their financial reports. The commenter argued that some labor organizations already find it difficult to file current LM forms in a timely manner. Section 207 of the LMRDA expressly states that each labor organization annual financial report must be filed within ninety days after the organization's fiscal year. This requirement is consistent with the evident intention of Congress that union members and others have access to regular and timely annual reports as a means to effectuate union self-government. The statute provides no authority to waive this deadline, even when a union has made a good faith effort to comply with the deadline. The Department has concluded that neither the current nor the revised reporting forms for labor organizations are likely to pose unreasonable difficulties for union officials who are reasonably diligent in their efforts to timely file the union's Form LM-2 and any Form T-1.

Another commenter, also an accountant, suggested that a reporting labor organization be permitted to file information from the "latest available" report by the trust and that it would be simpler to require Form T-1 to be filed at the same time that the labor organization must file its annual report, namely within ninety days after the end of the labor organization's fiscal year, rather than ninety days after the end of the trust's fiscal year. As discussed above, only certain reports will be acceptable as substitutes for the Form T-1. Nonetheless, this comment suggests a

reasonable approach that will ensure that union members are able to obtain relevant information about a trust in which his or her union has an interest, while reducing any burden for the reporting union. Thus, the Department has decided to require a reporting labor organization to file its Form T-1(s), or qualifying audits in substitution for Form T-1(s), at the same time as it files its own Form LM-2. The Form T-1, or qualifying audit, however, need not cover the same reporting year as the Form LM-2. Rather, the reporting labor organization must provide, at the time it files its Form LM-2, a Form T-1 or qualifying audit for the trust's most recent fiscal year that ended during the labor organization's reporting year – essentially the "latest available" report. If the trust's fiscal year coincides with the reporting labor organization, the labor organization will have 90 days in which to obtain the necessary information to complete a Form T-1, or the audit. If a trust's fiscal year ends on a different date than the labor organization's, the reporting union will have, in addition, any time between the end of the trust's most recent fiscal year and the end of the union's own fiscal year to obtain the information. Moreover, this requirement, like all other changes made by this rule, will be effective for fiscal years beginning on or after January 1, 2004. Accordingly, a union will be required to file a Form T-1 only for fiscal years beginning on or after January 1, 2004, of trusts in which it has an interest. Because a union need only file the "latest available" report for its trusts, it is unlikely that many Form T-1 reports, if any, will be required in the first year. For example, if a union's fiscal year begins on January 1, 2004, its Form LM-2 will be due at the end of March of 2005. If that union has an interest in a trust that begins its fiscal year on October 1, the first fiscal year for which a Form T-1 will be required for such a trust is the fiscal year that ends on September 30, 2005. Obviously, no Form T-1 will be available to file with the union's first revised Form LM-2 filed in March. If, however, a union that begins its fiscal year on January 1, 2004, has an interest in a trust that also

begins its fiscal year on January 1, 2004, the union should file a Form T-1 covering the trust's 2004 fiscal year when the union files its Form LM-2 in March of 2005.

V. Regulatory Procedures

A. Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not an "economically significant" regulatory action under section 3(f)(1) of Executive Order 12866. Based on an analysis of the data the rule is not likely to: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. The Department estimates the total cost of the final rule to be $79.9 million in the first year, $44.1 million in the second year, and $43.2 million in the third year (see the following Paperwork Reduction Act section for a description of how these costs were estimated). The three-year average cost of the rule is $55.7 million per year. The Department also estimates a benefit of $2.6 million per year in savings for 501 smaller unions because they can file the less burdensome Form LM-3 as a result of increasing the new Form LM-2 reporting threshold to $250,000. Further, there are substantial unquantifiable benefits that result from the greater

transparency of labor organizations' financial information to its members and other benefits of deterring fraud or discovering it earlier. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the rule under section 6(a)(3) of the Order. However, because of its importance to the public, the rule was treated as an otherwise significant regulatory action and was reviewed by the Office of Management and Budget (OMB).

One commenter stated that the Department failed to meet certain requirements of Executive Order 12866. Specifically, the comment asserted that the Department failed in several respects to adhere to the "Principles of Regulation" set forth in Section 1(b) of the Order:

a. The Notice of Proposed Rulemaking did not demonstrate that the Department engaged in any investigation and assessment of the problems addressed by the proposed rule.

b. The Notice of Proposed Rulemaking did not demonstrate that the Department considered any non-regulatory alternatives for accomplishing the objectives of the proposed rule.

c. The Notice of Proposed Rulemaking provided no evidence that the proposed rule would reduce financial mismanagement of labor organizations or was the most cost effective means to address the objectives of the rule.

d. There is no documentation that the Department's proposed rule is based on the best reasonably obtainable information.

e. The proposed rule ignores the preference expressed in Section 1(b)(8) of Executive Order 12866 for performance objectives rather than design standards.

The comment also asserted that the requirements for significant regulatory action set forth in Executive Order 12866 were not properly observed in that:

a. The Department did not engage in any cost-benefit analysis of the proposed rule.

b. The Department did not seek the involvement of those intended to benefit from and expected to be burdened by the proposed rule.

c. The Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) did not take sufficient time to review the Department's proposed rule for purposes of Executive Order 12866.

As an initial matter, the Department firmly believes it has complied fully with E.O. 12866 in all relevant respects. The comment appears to have a fundamental misapprehension of the purpose and function of Executive Order 12866 and of the Department's efforts to comply with the requirements of the Order. As explained below, the purpose of Executive Order 12866 is to facilitate the effective internal management of the Federal Government with respect to the development of regulatory actions. Indeed, Sections 6(a)(3)(E) and 6(b)(4)(D) in fact provide that an agency and OIRA will make available to the public various information and documents regarding the development of agency rules only "[a]fter the regulatory action has been published in the Federal Register or otherwise issued to the public."

Inasmuch as Executive Order 12866 is intended solely for the internal management of federal regulatory actions, the Order does not provide for judicial review or other public review of the procedures and substantive requirements of the Order during the developmental stages of a rule. That is underscored in several provisions of the Order. For example, Section 10 of the Order states: "This Executive Order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person."

The nature of Executive Order 12866 as a tool for the development and internal review of federal rules also is evident throughout the text of the Order. For example, "The Principles of Regulation," which the comment appears to have treated as setting forth substantive legal requirements, is introduced by the statement that agencies "should" adhere to those principles

"where applicable." Section 1(b)(8), as the comment suggests, expresses a preference for rules that establish performance objectives rather than rules that mandate specific behavior or the specific manner of compliance, but states that this should be sought "to the extent feasible." Section 1(b)(6), as suggested by the comment, provides for an assessment of the costs and benefits of a proposed rule but adds, "recognizing that some costs and benefits are difficult to quantify." In the instant rulemaking, the Department has assessed fully the costs and benefits associated with the final rule.

The commenter's demand that the efforts of the Department and OIRA to comply with the procedural and substantive principles, objectives, and requirements of Executive Order 12866 be documented in detail, be described exhaustively for the review of the public at this time, and be evidenced in the Notice of Proposed Rulemaking is misplaced, as is the objection that its view of the most cost effective alternative was not proposed. The principles, objectives, and requirements of Executive Order 12866 are designed to guide and assist the agency and OIRA during the development of the agency rule and are not addressed to the public. The remedy for any agency failure to comply with some requirement of the Executive Order, as the excerpt from Section 10 referred to above makes clear, is not judicial review at the behest of the regulated or benefited community under the proposed rule; rather, the remedy is the President's directive in Section 8 of the Order that the agency's rule may not be published in the Federal Register or otherwise issued to the public until OIRA either waives or completes its review.

Some of the procedural and substantive requirements of Executive Order 12866, as expressly indicated in Section 1(b)(6) ("recognizing that some costs and benefits are difficult to quantify"),

are not susceptible to precise definition and measurement. The insistence of the comment that the Department did not choose "the most cost effective means to address the alleged problem" is itself not a statement that can be assessed with objective precision. Any calculus of the costs and benefits of the proposed rule is based in significant part on the value of transparency and accountability in union financial affairs as well as on very difficult projections regarding the impact of the accessibility of financial information on sound union financial management and union democracy generally. That increased transparency in union financial affairs will deter some mismanagement and malfeasance, promote democratic values in unions, and prevent the loss of trust by members and the loss of confidence by the public generally in unions and their officials cannot be seriously doubted. But the Department recognizes that it is very difficult to quantify and balance the associated costs and benefits of those matters with any precision.

The Department has concluded, therefore, that to the extent feasible, appropriate, and necessary, the Department has disclosed in the Notice of Proposed Rulemaking and, more extensively, in this preamble to the final rule the pertinent aspects of the Department's assessment of the problem, the information relied on, the costs and benefits involved, the alternatives considered, and the most appropriate remedy. For the various reasons outlined above and contrary to the apparent assumption of the comment, Executive Order 12866 did not require the Department to set forth in the Notice of Proposed Rulemaking or in this preamble other evidence of the Department's efforts to comply with the Order in developing and submitting this proposal to OIRA for review.

B. Small Business Regulatory Enforcement Fairness Act

The Department has concluded that this rule is not a "major" rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.). In reaching this conclusion, the Department has determined that the rule will not likely result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year. The basis for the Department's estimate of the likely cost of compliance with this rule is set forth above.

D. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that the rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because

the rule has no direct effect on States or their relationship to the Federal government, the rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

E. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant impact on a substantial number of small entities. The Small Business Administration (SBA) determined, in a regulation that became effective on October 1, 2000, that the maximum annual receipts allowed for a labor union or similar labor organization and its affiliates to be considered a small organization or entity under section 601(4), (6) of the Regulatory Flexibility Act was $5.0 million. 13 C.F.R. 121.201 [Code Listing 813930]. This amount was adjusted for inflation to $6.0 million by a regulation that became effective on February 22, 2002. Accordingly, the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

1. Statement of the Need for, and Objectives of, the Rule

The following is a summary of the need for, and the objectives of, the final rule. A more complete discussion is contained in the preamble above.

The Department is revising the forms labor organizations use to file the annual financial reports required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act). This final rule modifies Form LM-2, which is the report required to be filed by the largest labor organizations and creates a new Form T-1 for these unions to report the assets, liabilities, receipts, and disbursements of trusts in which a labor organization has an interest. To reduce the burden on smaller labor organizations, the final rule also raises the threshold for filing Form LM-3 to annual receipts of between $10,000 and $249,999 to correspond with the higher Form LM-2 threshold ($250,000). These forms are prescribed by the Secretary of Labor to implement the Act and incorporated by reference in the applicable regulations.

Over the past forty years, the functions and operations of unions have evolved while the forms used by unions to file annual financial reports required by the LMRDA have remained substantially unchanged. The forms no longer serve their underlying purpose because they fail to provide union members with sufficient information to reasonably disclose to them "the financial condition and operation[s]" of labor organizations as required by the LMRDA. As noted previously, it is impossible for union members to evaluate in any meaningful way the operations or management of their unions when the financial disclosure reports filed with OLMS simply report large expenditures (*e.g.*, $62 million) for broad, general categories like "Grants to Joint Projects with State and Local Affiliates." The large dollar amount and vague description of such entries make it essentially impossible for anyone to determine with any degree of specificity what union operations their dues are spent on, without which the purposes of the LMRDA are not met.

Today's union members need relevant information provided in a usable format in order to make the decisions necessary to exercise their rights as members of democratic institutions. The information provided members on the current forms lags well behind the financial information available to them in other contexts of their lives as consumers, citizens, and investors. The Department is committed to maintaining accountability and promoting transparency with full and fair disclosure by labor organizations. Providing additional detail on Form LM-2 and requiring similar disclosure on the new Form T-1 of information about trusts in which the labor organization has an interest is necessary to give union members an accurate picture of their labor organization's financial condition and operations and to prevent the circumvention or evasion of the statutory reporting requirements.

The revision of Form LM-2 is also necessary to improve its usefulness as a deterrent to financial fraud and mismanagement. OLMS case files repeatedly demonstrate that this goal of the Act is not being met. Over the past five years, OLMS investigations resulted in over 640 criminal convictions. As a remedy, the courts ordered the responsible officials to pay $15,446,896 in restitution, in addition to debarring them from union service for a combined total of almost ten thousand years. In many cases the broad aggregated categories on the existing forms enabled union officers to hide embezzlements and financial mismanagement. More detailed reporting of all financial transactions is likely to discourage and reduce corruption because it would be more difficult to hide financial mismanagement from members and strengthen the effective and efficient enforcement of the Act by the Department.

The objective of this rule is to increase the transparency of union financial reporting by revising the LMRDA disclosure forms and to take advantage of modern technology to reduce the reporting burden. This will enable workers to be responsible, informed, and effective participants in the governance of their unions; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the Act by OLMS.

2. Summary and Assessment of the Significant Issues Raised by Comments and Changes Made to the Proposed Rule as a Result of Such Comments

Many comments, although not directed specifically at the initial regulatory flexibility analysis, raised issues related to the effect of the proposed rule on small entities, and in response, the Department made many significant changes to its proposal. These issues and changes are discussed in detail above. The following addresses comments that are specifically related to the Department's initial regulatory flexibility analysis.

The AFL-CIO argues that the Department did not meet the standards of the Regulatory Flexibility Act and its requirements that agencies consider the impact of rules on small entities. Although the AFL-CIO acknowledges that the Department included a Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities, the AFL-CIO claims that a purported lack of analysis indicates that the Department's inquiry was not conducted in good faith. For example, the AFL-CIO argues that the Department never seriously considered the

alternatives listed in the initial Regulatory Flexibility Act analysis. The AFL-CIO contends that these alternatives were just "straw men" that the Department considered only briefly, knowing that they would be discarded. Among the alternatives that the Department should have considered and proposed for small unions, according to the AFL-CIO, were: 1) the "phasing in" of the effective date for the rule; 2) a permanent waiver of the electronic filing requirement; and 3) an exemption from functional reporting. These alternatives are addressed in the preamble and the discussion below.

The Department noted in the NPRM that the SBA's definition of "small entity" may not be appropriate in the context of labor unions and their regulation under the LMRDA. Nonetheless, the Department performed an Initial Regulatory Flexibility Analysis for the NPRM and addressed each of the categories, applying the SBA's definition as required by 5 U.S.C. 603. The Department has also submitted a Final Regulatory Flexibility Analysis with this final rule as required by 5 U.S.C. 604. Thus, the Department has met the procedural requirements of the Act.

The Department specifically considered and discussed in some detail five options in its Initial Regulatory Flexibility Analysis. Despite the AFL-CIO's disagreement with the Department's choice of options discussed or the Department's ultimate decisions concerning these options, the AFL-CIO has not shown and cannot show that the Department did not consider the options or acted in bad faith by not proposing them. In order to reduce the burden on smaller unions, the Department, among other revisions for the same purpose, adopted the alternative, identified in the NPRM, to raise the reporting threshold for the Form LM-2 from $200,000 to $250,000. As

discussed in detail in the preamble, other revisions, adopted in response to comments, should make compliance by smaller unions easier than if the Department's proposal was left unchanged.

The AFL-CIO contended that the Department failed to satisfy its obligation under the Regulatory Flexibility Act to actively solicit the participation of small entities as part of its planning for this rulemakings. The Department disagrees with this view and notes that it engaged in a substantial outreach effort, even before publication of the NPRM, in order to solicit ideas for improving the effectiveness of the annual financial report to achieve the disclosure intended by Congress in establishing the LMRDA's reporting requirements. To this end, Department officials conducted numerous consultations with union representatives, including face-to-face meetings with 39 unions. After publication of the proposal, Department officials continued to meet with unions that requested meetings and added notes of meetings with six unions during the public comment period to the rulemaking record.

An alternative suggested by commenters that directly affects the smallest unions to whom the new rule applies was to adjust upward for inflation the Form LM-2 filing threshold from $200,000, the adjusted amount set in 1994. The Department has adopted this alternative and increased the Form LM-2 threshold to $250,000 in the final rule. As a result, 501 unions that currently file a Form LM-2 will now be able to satisfy the requirements of the LMRDA by filing the simpler Form LM-3. It should also be noted that the final $250,000 threshold is significantly higher than the earlier thresholds for filing the Form LM-2 when they are adjusted for inflation – 1959 ($20,000), 1962 ($30,000), and 1981 ($100,000). The Department will continue to monitor

this threshold, as well as all other thresholds established by this rule, and may make future adjustments if economic conditions warrant such a change.

Another alternative considered by the Department was to phase-in the effective date for the Form LM-2 changes in order to provide smaller Form LM-2 filers additional lead time to modify their recordkeeping systems to comply with the new reporting requirements. This alternative also was supported by a number of commenters. After reviewing the comments, the Department has changed its proposal, which would have required unions to use the new Form LM-2 to file the report for any fiscal year beginning immediately after the publication of the final rule, and instead is requiring labor organizations to use the revised Form LM-2 to file the report for the fiscal years that begin on or after January 1, 2004, about three months after publication of this rule. This change provides approximately two-thirds of reporting unions with sufficient lead time within which to adjust their procedures to keep track of the information they will need to prepare a Form LM-2 and to submit, 15 months after the start of their next fiscal year (beginning on January 1, 2004), or nearly 18 months after the publication of this rule, the report to the Department, and even more time to the remaining third of reporting unions that use different dates for their fiscal years. Thus, no union will have less than about three months to change its bookkeeping and accounting systems to capture data that later will be needed to submit the Form LM-2.

With this change, unions will have adequate time to conform to the revised forms and comply with the more detailed reporting requirements. The public comments and OLMS auditing and accounting experience confirm that many local (and therefore generally smaller) unions already

collect and maintain some (and in some cases most) of the information required by the new form. Moreover, unions must already track and maintain records for all disbursements in order to report total disbursements for the variety of functional categories on the current Form LM-2. The survey data submitted by the AFL-CIO suggests that 16 to 22% of local unions already have the capability to itemize and track receipts and disbursements (including credit card transactions), as required by the final Form LM-2. Further, after the research and review of different types of commercial-off-the-shelf accounting software, the Department believes that updating and modifying accounting systems to track all of the information required by the revised forms should be accomplished easily, given the lead time built into the final rule. The steps required of unions to adjust their bookkeeping and accounting procedures are discussed in the preamble. OLMS also plans to provide compliance assistance to any labor organization that requests it. In addition, a review of the proposed revisions was undertaken to reduce paperwork burden for all Form LM-2 filers and an effort was made during the review to identify ways to reduce the impact on small entities. The Department believes it has minimized the economic impact of the form revision on small unions to the extent possible while recognizing workers' and the Department's need for information to protect the rights of union members under the LMRDA.

To reduce the burden on small labor organizations, several commenters suggested that unions be required to file annual independent audits as an alternative to filing the Form LM-2. Although some commenters argued that requiring unions to obtain annual audits is within the Department's statutory authority, no provision of the LMRDA vests the Secretary of Labor with any express authority to require unions to obtain audits and the Department has chosen not to attempt to

impose such a requirement. Moreover, an annual audit requirement would require a reporting union to incur the expense of obtaining the services of an independent auditor and thus impose an additional burden on small unions, many of which, in the Department's experience, are not currently obtaining private audits. Finally, this alternative was rejected because audits typically do not reveal the detail on the financial operations of unions that is required by the statute (29 U.S.C. 431) and requiring such detail with the appropriate audit standards would be no less burdensome than the final forms.

A union, however, could meet its trust reporting obligation under the final rule by utilizing any exceptions provided for in the rule, including the submission of an independent audit of the trust that meets the minimum standards prescribed by the rule. In permitting this last exception, the Department recognizes that although most audits do not provide an adequate substitute for the full disclosure of information generally required under the LMRDA, this statutory purpose can be achieved in the trust reporting context so long as the information is verified by an independent examiner and meets the standards prescribed by the rule. By permitting a labor organization to submit an audit in place of a Form T-1, smaller labor organizations that file a Form LM-2 are relieved of the burden of compiling a separate form and need only insist that entities with annual receipts of $250,000 or more, to which they contribute $10,000 or more, or to which that amount is contributed on their behalf, provide only very basic information regarding their fiscal operations.

Another commenter suggested that a reporting labor organization be permitted to file information from the "latest available" report by the trust. This commenter observed that it would be simpler

to require Form T-1 to be filed at the same time that the labor organization must file its annual report, namely within ninety days after the end of the labor organization's fiscal year, rather than ninety days after the end of the trust's fiscal year. Although the "latest available" report of the trust may not be a sufficient substitute for a Form T-1 (depending on whether it meets the prescribed audit criteria as discussed in the preamble), this suggestion presents a reasonable alternative that should both alleviate burden for the reporting labor organization and minimize confusion for those interested in this information. Thus, the Department has decided to require a reporting labor organization to file all Form T-1s, or qualifying audits in substitution for Form T-1s, if it so chooses, at the same time that it files its own Form LM-2.

To reduce the burden on smaller labor organizations, a few commenters, including the AFL-CIO, suggested that the Department establish a permanent waiver for electronic filing and/or pilot testing of electronic filing as alternatives to the Department's proposal. As discussed in the preamble, the Department has rejected the permanent waiver alternative because for several years Congress has urged the Department to implement the electronic filing of annual reports required by the LMRDA, along with an indexed and easily searchable computer database of the information submitted, accessible by the public over the Internet. *See* H.R. Conf. Rep. 105-390, 1997 U.S.C.C.A.N. 2061; H.R. Conf. Rep. 105-825; H.R. Conf. Rep. 106-419; H.R. Conf. Rep. 106-479; H.R. Conf. Rep. 106-1033; H.R. Conf. Rep. 107-342, 2002 U.S.C.C.A.N. 1690; H.R. Conf. Rep. 108-10, 2003 U.S.C.C.A.N. 4. Moreover, as the public comments suggest, the relevant inquiry with respect to electronic filing is not whether it should be required, but rather how and when it should be accomplished. After significant research and analysis (as discussed above), the Department has decided that the best method to address any legitimate excessive

burden associated with electronic filing is not through a permanent waiver, but through a hardship exemption (a term borrowed from the SEC's electronic filing procedures), and that, for the majority of filers, electronic filing is the least burdensome option.

The Department gave serious consideration to the comments suggesting a pilot program or a delayed phase-in of the reporting requirements, but has concluded that such alternatives are unnecessary. After reviewing the recordkeeping and reporting requirements of the current Form LM-2, the public comments that were received, and the modifications that unions may have to make to their accounting and recordkeeping systems to comply with the final rule, the Department believes that Form LM-2 filers will be able to make the adjustments before the start of their first reporting period under the final rule – a minimum of about three months from the date of the rule's publication – without incurring an undue burden. The most important change involves the tracking of receipts reported in Schedule 14 and disbursements to ensure that each disbursement is allocated to the proper disbursement category on the revised Form LM-2 with a descriptive purpose and that all of the required information (name, address, purpose, date, and amount) is captured for each "other" receipt and disbursement.

Some commenters stated that this is a dramatic change in the Form LM-2 and would impose a significant burden on unions in order to change their recordkeeping systems before the effective date of the final rule. However, this position fails to recognize that unions have always been required to allocate each disbursement to one or more disbursement categories on the current Form LM-2 (and to maintain those records). For example, unions have always been required to allocate credit card payments to multiple categories of the LM-2 based upon the purposes of each

charge. A single credit card charge to a travel agent may include expenses that must be allocated to three or more different places on the current LM-2. Although the Department has changed the functional categories on the final form, the underlying method of allocating these disbursements and maintaining the records remains the same.

Changing accounting and recordkeeping systems to capture all of the required information (name, address, purpose, date, and amount) for each other receipt and disbursement can be accomplished before January 1, 2004. Filers will need to study and understand the new requirements and may have to work with their staff or vendors to make adjustments to the union's accounting and recordkeeping systems, and then train the staff. However, these sorts of operations – changing the way disbursements are classified and the types of information recorded – are routine in the normal course of business and relatively easy to perform within accounting systems. Moreover, as discussed in the preamble, the public comments suggest that 60% of the national and international unions already maintain written records for the information required by the new "other receipts" schedule and that many unions already maintain records as part of their normal business practice that reflect the required detail for disbursements for the revised form (even though between 10 and 40% of unions could not provide *all* of the required detail). Finally, because each labor organization's filing date is dependent on its chosen fiscal year, many unions will have more than three months to complete any changes they may have to make to their accounting and recordkeeping systems.

Additionally, the Department will provide substantial compliance assistance to unions to assist them in understanding the new requirements and making adjustments to their recordkeeping and

reporting practices. This initiative will include guidance that provides an overview of the requirements, a comparison of the old and new requirements, the types of account changes unions may have to make, guidance to assist unions to configure off-the-shelf software to best capture the information needed to provide the data required for submitting the LM-2 and T-1 reports, a schedule of seminars for unions hosted throughout the country, an email list-serve to provide periodic updates to interested parties, web-based materials that include frequently asked questions, a description of the Form T-1 registration process, and other topics of interest to filers.

Filers that choose to take advantage of the electronic importation features of the Department's reporting software will need to create reports within their accounting systems that will be used to complete the revised Form LM-2 and new Form T-1. However, this work need not be completed until the form is ready to be filed, no earlier than 15 months after the effective date of the final rule and nearly 18 months after publication. Further, in the event that any labor organization encounters severe difficulties concerning electronic filing, a hardship exemption will be available.

A few commenters suggested that unions only be required to report the debts they have written off as a less burdensome alternative to reporting all debts above the proposed $1,000 threshold that are 90 days or more past due. This alternative was rejected because: 1) the Department believes that raising the itemization threshold to $5,000 for reporting debts will alleviate much of the burden suggested by commenters as a multitude of relatively small accounts will no longer have to be listed, particularly for smaller unions; 2) as discussed above, itemized disclosure is important because it provides a vital early warning signal of financial distress and possible fraud

as in the Washington Teachers' Union case; and 3) the itemization requirement is tailored to a union member's legitimate interest in knowing, for example, whether the union continues to do business with an entity that fails to pay its debts or whether the union continually falls behind in payments to a certain vendor. Moreover, the public comments suggest that the majority of unions already collect most, if not all, of the information required by the accounts receivable and accounts payable schedules on the final form, which is not surprising considering the current Form LM-2 requires aggregate reporting of accounts receivable and accounts payable.

Finally, a few commenters, together with the AFL-CIO, suggested an exemption from functional reporting to reduce the burden on smaller labor organizations. The Department has rejected this alternative because it would: 1) eliminate the availability of meaningful information to over 12.3 million union members in unions with less than $6.0 million in annual receipts (the current SBA small entity standard for unions) and significantly reduce the transparency and accountability in the reporting of union financial condition and operations, which may have far greater impact on, and relevance to, union members, particularly since such lower levels of union organizations generally set and collect dues and provide representational and other services for their members; and 2) not provide any additional deterrence to fraud and embezzlement by officials in smaller labor organizations.

Moreover, functional accounting is not a new concept to labor organizations, large or small. The current Form LM-2, through its use of categories, requires labor organizations to report certain expenditures by function. Moreover, functional accounting is required of not-for-profit organizations under the standards established by the FASB and some of the labor organizations

that submitted comments acknowledged that they use functional reporting as a management tool. Furthermore, many commenters overlooked the fact that the IRS requires not-for-profit organizations, including unions, to report their expenditures by certain categories and that the IRS uses several functional categories that parallel, in many respects, the categories in the proposed Form LM-2. For example, both the IRS Form 990 and the new Form LM-2 require disclosure of disbursements related to political activity and lobbying (even though, unions typically report no information under these categories to the IRS). Finally, as explained above, the Department has made significant changes to the functional categories and associated schedules in the new Form LM-2 to minimize the burden, particularly on small unions.

3. Number of Small Entities Covered Under the Rule

The primary impact of this final rule will be on the largest labor organizations, defined as those that have $250,000 or more in annual receipts. There are approximately 4,778 labor organizations of this size that are required to file Form LM-2 reports under the LMRDA (just 19.0% of all labor organizations covered by the LMRDA). The Department estimates that 4,463 of these unions, or 93.4%, are considered small under the current SBA standard (annual receipts less than $6.0 million). These unions have average annual receipts of approximately $1.1 million and an average of 14 officers and 4 employees. The rule will also reduce the burden on 501 small unions that will be able to file Form LM-3 instead of Form LM-2 because of raising the LM-2 threshold to $250,000. These estimates are based on 2001 and 2002 data from the Office of Labor-Management Standards e.LORS system. This system contains annual receipt data on all Form LM-2, LM-3, and LM-4 filers. Although these estimates may not be predictive

of the exact number of small unions that will be impacted by this final rule in the future, the Department believes these estimates to be sound and are derived from the best available information.

4. Reporting, Recordkeeping and Other Compliance Requirements of the Rule

This final rule is not expected to have a significant economic impact on a substantial number of small entities. The LMRDA is primarily a reporting and disclosure statute. It establishes various reporting requirements for labor organizations, labor organization officers and employees, employers, surety companies, and employer consultants pursuant to Title II of the Act. Accordingly, the primary economic impact of the final rule will be the cost to reporting unions of compiling, recording, and reporting required information. The final rule establishes a new set of reporting requirements for those labor organizations with receipts of $250,000 or more. See the following Paperwork Reduction Act section (Overview of Changes to Form LM-2, and Overview of the New Form T-1) for greater detail on the reporting, recordkeeping, and other compliance requirements of the rule. In order to comply with these requirements, reporting unions may need to make adjustments in their recordkeeping and bookkeeping procedures and, in some instances, to make changes in computing hardware or software to file the reports electronically. None of these expenses is expected to have a substantial impact on the 4,463 unions considered to be small by SBA standards (because they amount to only 1.7% of these unions' average annual receipts over three years), in large part because the public comments and OLMS's auditing experience confirm that labor organizations, like most small entities following

standard business practices, already maintain at least some of the receipt and disbursement records required by the final rule.

The average annual reporting and recordkeeping burden for the current Form LM-2 is $8,381 or 0.3% of average annual receipts for all Form LM-2 filers. The average *additional* first year cost (including first year non-recurring implementation costs) of the final rule for the 4,463 unions considered to be small by SBA standards for filing both the revised Form LM-2 and new Form T-1 is less than $17,876, or 1.6% of average annual receipts (see Table 1). The average *total* first year cost of the revised Form LM-2 and new Form T-1 on small unions is $26,257, or 2.3% of total annual receipts. Further, the average *total* cost for small unions falls to $18,322 or 1.6% of total annual receipts in the second year.

INSERT TABLE 1 HERE

The Department believes that it is very unlikely that small unions with about $250,000 in annual receipts would incur many of the costs incurred by the typical Form LM-2 filer. (For example, unions near this amount of receipts are likely to have far less complicated accounts covering far fewer transactions than the typical Form LM-2 filer (with receipts between $500,000 and $49.9 million).) However, to assess the "maximum" or "worst-case" impact on small unions, the Department considered the unlikely event that a small union with $250,000 in annual receipts could incur the average compliance burden for unions with annual receipts of $500,000 to $49.9 million for the revised Form LM-2 and the new Form T-1. Under this unlikely scenario, the total *additional* cost of the final rule would be $20,596 in the first year, or 8.2% of annual receipts,

and $11,206 in the second year, or 4.5% of annual receipts (see Table 1). For a small union with $500,000 in annual receipts, the maximum *additional* cost of the final rule would be 4.1% of receipts in the first year and 2.2% in the second year.

As noted in section 3 above, the final rule will apply to 4,463 unions that meet the SBA standard for small entities, or just 18.0% of all unions with annual receipts of less than $6 million that must file an annual financial report under the LMRDA (the other, even smaller, unions can file the less burdensome Form LM-3 or Form LM-4). Further, just 1,574 unions with annual receipts from $250,000 to $499,999, or 6.3% of all unions covered by the LMRDA, would be affected by the final rule. Even less (than 6.3% of the total) would incur the maximum *additional* costs of the final rule described above. Therefore, the Department has decided that the final rule does not have a significant impact on a substantial number of small entities. Moreover, raising the Form LM-2 filing threshold from $200,000 to $250,000 will enable 501 of the smallest LM-2 filers to use the less burdensome Form LM-3 and save them an average of $5,104 per year compared to filing the current Form LM-2. Smaller unions that file Form LM-3 or LM-4 also will not have to file any Form T-1.

5. Steps Taken to Minimize the Impact on Small Entities

The Department has raised the reporting threshold for the final Form LM-2 and new Form T-1 to $250,000 from the $200,000 threshold in the proposed rule. The Department has also determined that the itemization threshold for disbursements should be set at the high end of the

range proposed ($2,000 to $5,000) and that specific information be required only if the amount of an "other receipt" or disbursement is $5,000 or more or, if such receipts from or disbursements to a single entity, aggregate to $5,000 or more during the reporting year. This change will reduce the number of disbursements that will have to be individually itemized and reported by smaller labor organizations. (OLMS experience in reviewing union records over the years in the course of audits and investigations suggests that smaller unions typically have fewer large disbursements). As noted above, the Department will continue to monitor all of the reporting thresholds in the Form LM-2 to attempt to ensure that both the level of reporting and the information reported remain relevant and meaningful in light of changes in the economy.

Raising the threshold for filing a Form LM-2 from $200,00 to $250,000 will enable 501 of the smallest unions that previously were required to file a Form LM-2 to now use the Form LM-3. The latter form requires significantly less recordkeeping and reporting requirements than Form LM-2, thus reducing the burden on unions with annual receipts between $200,000 and $249,999. The 501 unions affected will save an average of $5,104 from the cost of filing the current Form LM-2, because they can file the less burdensome Form LM-3 rather than the current Form LM-2. In addition, each of these unions also will avoid an average $19,640 per year in costs that they would incur if they had to file the new Form LM-2 and an average $1,253 per year because they will not have to file a Form T-1. Thus, each of the 501 unions affected by raising the Form LM-2 threshold from $200,000 to $250,000 will avoid $17,616 in potential costs increases (i.e., $19,640 + $1,253 - $3,277) by virtue of this change.

Burden hour differences between the smaller labor organizations that are large enough to be required to file Form LM-2 and the largest labor organizations are more likely to result from differences in the financial operations of the unions themselves. Only the largest filers, those that have annual receipts in the millions, are likely to have extensive financial transactions. Unions with receipts of between $250,000 and $1.0 million, which account for over 2,833 of the 4,778, or 59.3% of Form LM-2 filers, are likely to have less difficulty using the revised form. A survey of affiliated unions submitted by the AFL-CIO during the public comment process suggests that the median cost of the final rule will be just $5,724 per year for unions with less than $1.0 million in receipts compared to more than $820,000 for unions with $100.0 million to $250.0 million in annual receipts. As explained more fully below, the predictive value of the AFL-CIO survey is open to question in some respects. The Department's own experience, based on years of reviewing union records in audits and investigations, suggests that the AFL-CIO estimates of costs are more likely to be too high than too low.

Unions with total annual receipts of less than $250,000 (81.0% of all LMRDA covered unions) can still elect to file a simplified report. Over 47.3% of all labor organizations may file a Form LM-3 that entails a lesser burden than the Form LM-2. The final rule makes no change to the Form LM-3 and the only changes to its instructions clarify the reporting obligation of intermediate bodies that have no private employee members, but are subordinate to national or international labor organizations that are covered by the LMRDA. The instructions state that such intermediate bodies must file an annual financial report. The very smallest unions, with total annual receipts of less than $10,000 (33.7% of all LMRDA covered unions), can elect to

file an abbreviated report, Form LM-4, which further reduces their recordkeeping and reporting burden.

The Department also has made several other changes to the proposed rule that will reduce the burden on small unions. Raising the reporting threshold for itemizing accounts receivable and accounts payable to $5,000 will reduce the number items that must reported, particularly for small unions that have few accounts receivable and accounts payable. Removing the itemization requirement for the benefits schedule will reduce the reporting burden for all unions and protect the privacy of individual benefit recipients, including those receiving payments for medical procedures, insurance or pension claims, or burial benefits. Changing the reporting requirements on the membership schedule will enable union members to easily obtain useful information without requiring unions to manufacture or report information for membership categories it does not keep. Finally, the new audit alternative for Form T-1 is aimed at promoting disclosure while reducing the recordkeeping and reporting burdens for unions with trusts that are already subject to an independent audit.

Small entities will also benefit from OLMS's electronic labor organization reporting system (e.LORS), which utilizes technology to collect, maintain, and disclose the information it collects. The objectives of e.LORS are: 1) the electronic filing of Forms LM-2, LM-3, and LM-4 via the Internet; 2) LMRDA program enhancements to improve accuracy, completeness, and timeliness of Forms LM-2, LM-3, and LM-4; and 3) the public disclosure of reports with a searchable database via the Internet. Labor organizations are directed to use an electronic reporting format and OLMS will make software available for downloading over the Internet that enables labor

organizations to report financial information that can be electronically compiled in the proper format for electronic filing.

The use of electronic forms makes it possible to download information from previously filed reports directly into the form; enables officer and employee information to be imported onto the form; makes it easier to enter information by manually typing in the data, by electronically importing data by schedule, or by electronically importing data for the entire form; automatically performs calculations and checks for typographical and mathematical errors and other discrepancies, which reduces the likelihood of having to file an amended report; and allows the submission of the form electronically via the Internet. The error summaries provided by the software, combined with the speed and ease of electronic filing, will also make it easier for both the reporting labor organization and OLMS to identify errors in both current and previously filed reports and to file amended reports to correct them.

OLMS also has revised the instructions for the final Form LM-2 and Form T-1 to provide examples and guidance on how to complete the report and maintain records, and will provide compliance assistance for any questions or difficulties that may arise from using the software. A help desk is staffed during normal business hours and can be reached by calling a toll-free telephone number: 1-866-4-USA-DOL (1-800-487-2365).

F. Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 (PRA). *See* 5 CFR 1320.9. As discussed in the preamble to this final rule and the analysis that follows, the rule implements an information collection that meets the requirement of the Act in that: 1) the information collection has practical utility to labor organizations, their members, other members of the public, and the Department; 2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; 3) the provisions reduce to the extent practicable and appropriate the burden on unions that must provide the information, including small unions; 4) the forms, instructions, and explanatory information in the preamble are written in plain language that will be understandable by reporting unions; 5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of unions that must comply with them; 6) this preamble informs unions of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of compliance, which is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; 7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; 8) the Department has explained why the method of collecting information is "appropriate to the purpose for which the information is to be collected"; and 9) the changes implemented by this rule make extensive, appropriate use of information technology "to reduce burden and improve data quality, agency efficiency and responsiveness to the public." *See* 5 CFR 1320.9; 44 U.S.C. 3506(c). The Department's PRA analysis contains a summary, background on the current Form LM-2, an overview of changes to each form, and the burden associated with the current forms

and final rule. The Department also discusses various comments, specific to the PRA, that are not fully addressed elsewhere in the preamble. As discussed, the Department has revised its burden estimates for the final rule, based upon its review of the comments and adjustments to its baseline estimate of the costs associated with the requirements of the Department's current rule relating to the submission of annual financial reports by labor organizations.

In this rulemaking, the Department has sought to improve the usefulness and accessibility of information to members of labor organizations subject to the LMRDA. The LMRDA reporting provisions were devised to protect the basic rights of union members and to guarantee the democratic procedures and financial integrity of labor organizations. The 1959 Senate report on the version of the bill later enacted as the LMRDA stated clearly, "the members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property." A full accounting was described as "full reporting and public disclosure of union internal processes and financial operations."

As labor organizations have become more multifaceted and have created hybrid structures for their various activities, the form used to report financial information with respect to these activities has remained relatively unchanged and has become a barrier to the complete and transparent reporting of labor organization's financial information intended by the LMRDA. Moreover, just as in the corporate sector, there have been a number of financial failures and irregularities involving pension funds and other member accounts maintained by labor organizations. These failures and irregularities result in direct financial harm to union members. If union members had more complete, understandable information about their unions' financial

transactions, investments, and solvency, they would be in a much better position than they are today to protect their personal financial interests and to exercise their rights of self-governance. The purpose of the final rule is to provide them with such information. The information collection achieved by this rule is integral to this purpose. The paperwork requirements associated with the rule are necessary to enable workers to be responsible, informed, and effective participants in the governance of their unions; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the Act by the Department.

Pursuant to the PRA, the information collection requirements contained in this final rule have been submitted to OMB for approval. Within 30 days from the date of publication of this final rule, you may direct comments by fax (202-395-6974) to: Desk Officer for the Department of Labor/ESA, Office of Management and Budget.

1. Summary:

This final rule modifies the annual reports required to be filed by the largest labor organizations, prescribed by the Secretary of Labor to implement the Act and incorporated by reference in the applicable regulations. As discussed above and throughout the preamble to the final rule, the revised paperwork requirements are necessary to effectuate the purposes of the LMRDA by providing union members with information about their unions that will enable them to be responsible, informed, and effective participants in the governance of their unions; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the

statutory reporting requirements; and strengthen the effective and efficient enforcement of the Act by the Department. The manner in which the collected information will serve these purposes is discussed throughout the preamble to the final rule.

Two forms that will implement the new reporting requirements and their instructions are published in the appendix to this final rule: the revised Form LM-2, a form now filed by the largest unions to report their annual financial information, and the new Form T-1, a form also to be filed by the largest unions to report the assets, liabilities, receipts, and disbursements of trusts in which they have an interest. The forms are designed to take advantage of technology that makes it possible to increase the detail of information that is required to be reported, while at the same time making it easier to file and publish the contents of the reports. Union members thus will be able to obtain a more accurate and complete picture of their union's financial condition and operations without imposing an unwarranted burden on reporting unions. The rule also includes a clarification of Department's interpretation of Section 3(j)(5) (29 U.S.C. 402(j)(5)) of the LMRDA, in agreement with the recent decision of the U.S. Court of Appeals for the Ninth Circuit in *Chao v. Bremerton Metal Trades Council, AFL-CIO*, 294 F. 3d 1114 (2002). The Department adopts that court's view that any "conference, general committee, joint, or system board, or joint council" that is subordinate to a national or international labor organization is itself a labor organization under the LMRDA and will be required to file an annual financial report if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA. This clarification applies to all financial reports required to be filed under the LMRDA. The final rule also increases the filing threshold for the Form LM-3, a form filed by unions with less annual

receipts than Form LM-2 filers and requiring a less detailed accounting than Form LM-2, a change that will reduce the recordkeeping and reporting burden for smaller unions. The final rule did not raise the filing threshold for Form LM-4 and did not otherwise revise the Form LM-4, although the instructions for Form LM-4 have been altered to reflect the Department's decision to adopt the holding of *Bremerton Metal Trades Council, AFL-CIO*. Supporting documentation need not be submitted with the forms, but labor organizations are required, pursuant to the LMRDA, to maintain, assemble, and produce such documentation in the event of an inquiry from a union member or an audit by an OLMS investigator.

The Department's NPRM in this rulemaking contained an initial PRA analysis, which was also submitted to, and approved by, OMB. Based upon careful consideration of the comments and the changes made to the Department's proposal in this final rule, the Department has made significant adjustments to its burdens estimates. The costs to the Department for administering the annual financial report requirements of the LMRDA also were adjusted. These federal annualized costs, undifferentiated by form, are separately discussed after the burdens on the reporting unions are considered.

Based upon the analysis presented below, the Department estimates that the total first year burden to comply with the revised Forms LM-2 and LM-3 and the new Form T-1 to be 3.4 million hours, 1.4 million hours and 0.2 million hours, respectively. The total first year compliance costs associated with this burden, including the cost for computer hardware and software, are estimated to be $116.0 million for the Form LM-2, $39.0 million for the Form LM-3 and $5.5 million for the new Form T-1. The actual cost of the final rule, however, is not

$160.5 million in the first year. It is the difference between cost of the current forms and the revised Form LM-2 and new Form T-1, or $79.9 million the first year ($160.5 million - $80.6 million). The average three-year cost of the final rule is $55.7 million. Therefore, this final rule is not a major economic rule.

Both the burden hours and the compliance costs associated with the revised Form LM-2 and the new Form T-1 decline in subsequent years. The Department estimates that the total burden averaged over the first three years to comply with the revised Form LM-2 and the new Form T-1 to be 2.8 million hours and 0.1 million hours, respectively. The total compliance costs associated with this burden averaged over the first three years are estimated to be $93.8 million for the Form LM-2 and $3.5 million for the new Form T-1.

2. Background on Current Form LM-2:

Every labor organization whose total annual receipts are $200,000 or more and those organizations that are in trusteeship must currently file an annual financial report on the current Form LM-2, Labor Organization Annual Report, within 90 days after the end of the union's fiscal year, to disclose its financial condition and operations for the preceding fiscal year. The current Form LM-2 is also used by covered labor organizations with total annual receipts of $200,000 or more to file a terminal report upon losing their identity by merger, consolidation or other reason.

The current Form LM-2 consists of 24 questions that identify the labor organization and provide basic information (in primarily a yes/no format); a statement of 11 financial items on different assets and liabilities; a statement of receipts and disbursements; and 15 supporting schedules. The information that is reported includes: whether the union has any subsidiary organizations and trusts; whether the union has a political action committee; whether the union discovered any loss or shortage of funds; the number of members; rates of dues and fees; the dollar amount for seven asset categories, such as accounts receivable, cash, and investments; the dollar amount for four liability categories, such as accounts payable and mortgages payable; the dollar amount for 16 categories of receipts such as dues and interest; and the dollar amount for 18 categories of disbursements such as payments to officers and repayment of loans obtained. Five of the supporting schedules include a detailed itemization of loans receivable and payable, the sale and purchase of investments and fixed assets, and payments to officers. There are also 10 supporting schedules for receipts and disbursements that provide union members with more detailed information by general groupings or bookkeeping categories to identify their purpose. Unions are required to track their receipts and disbursements in order to correctly group them into the categories on the current form.

The Department also has developed an electronic reporting system for labor organizations, e.LORS, which uses information technology to perform some of the administrative functions for the current forms. The objectives of the e.LORS system include the electronic filing of current Forms LM-2, LM-3, and LM-4, as well as other LMRDA disclosure documents; disclosure of reports via a searchable Internet database; improving the accuracy, completeness and timeliness of reports; and creating efficiency gains in the reporting system. Effective use of the system

reduces the burden on reporting organizations, provides increased information to union members, and enhances LMRDA enforcement by OLMS. The OLMS Internet Disclosure site is available for public use. The site contains a copy of each labor organization's annual financial report for reporting year 2000 and thereafter as well as an indexed computer database on the information for each report that is searchable through the Internet. The Department is developing an enhanced e.LORS system for the revised Form LM-2 and new Form T-1.

To ease the transition to electronic disclosure, OLMS includes e.LORS information in its outreach program, including compliance assistance information on the OLMS website, individual guidance provided through responses to e-mail, written, or telephone inquiries, and formal group sessions conducted for union officials regarding compliance. The current forms are provided on CD-ROM discs at no cost to labor organizations, can be downloaded from the OLMS website, and are available from OLMS field offices and from the OLMS National Office. OLMS has also implemented a system to permit union officers to submit forms electronically with digital signatures. Unions are currently required, however, to pay a minimal fee to obtain electronic signature capability for the two officers who sign the form. Information about this system can be obtained on the OLMS website at www.olms.dol.gov. Digital signatures ensure the authenticity of Form LM-2 reports without compromising efficiency. As discussed in the Regulatory Flexibility Analysis and the preamble, additional compliance assistance will be provided in connection with the new reporting and filing requirements.

Filing labor organizations have several advantages with the current electronic filing system. With e.LORS, information from previously filed reports and officer or employee information can

be directly imported to Form LM-2. Not only is entry of the information eased, the software also makes mathematical calculations and checks for errors or discrepancies. Ready acceptance of the benefits of electronic reporting is predictable based on experience with software that OLMS has developed and distributed to labor organizations for completing the current Forms LM-2, LM-3, and LM-4. Approximately 76% of unions that currently file Form LM-2, LM-3, and LM-4 take advantage of the ability to enter data electronically on a computerized form.

3. Overview of Changes to Form LM-2:

The Department, among other revisions for the purpose of reducing the burden on small unions, adopted the alternative, identified in the NPRM, to raise the reporting threshold for the Form LM-2 from $200,000 to $250,000. The new rule adjusts upward the Form LM-2 filing threshold of $200,000 set in 1994 to account for inflation. As a result of raising the Form LM-2 threshold to $250,000 in the final rule, 501 unions that currently file a Form LM-2 will now be able to satisfy the requirements of the LMRDA by filing the simpler Form LM-3. It should also be noted that the final $250,000 threshold is significantly higher than the earlier thresholds for filing the Form LM-2 -- 1959 ($20,000), 1962 ($30,000), and 1981 ($100,000).

In comparison to the current Form LM-2, the revised Form LM-2 includes: three fewer questions (21 instead of 24) that identify the labor organization and provide basic information (in the same general yes/no format); the same 11 financial items on assets and liabilities in Statement A; an updated Statement B that asks for information on fewer categories of receipts (13 instead of 16) and disbursements (17 instead of 19); and five additional supporting schedules

(20 instead of 15). The updated Statement B (Receipts and Disbursements) also drops six old categories of disbursements and adds five new categories that will provide more useful information to union members on the amount of union funds spent on representational activities, strike benefits, union administration, general overhead, and political activities and lobbying.

Over half (8) of the 15 current supporting schedules are not changing. These include loans receivable, loans payable, other assets, other liabilities, fixed assets, sale of investments and fixed assets, purchase of investments and fixed assets, and benefits. The schedule for itemizing investments has only a minor modification involving information that is maintained in the normal course of business – the reporting threshold has changed from over $1,000 and 20% of the total book value of the union's investments to over $5,000 and 5% of the total. Two other supporting schedules (Office and Administrative Expense, and Other Disbursements) on the current form have been dropped from the revised form and the disbursements that were reported on those schedules will now be reported elsewhere on the revised Form LM-2 (such as the schedules for union administration or general overhead).

One change to Form LM-2 is the requirement that unions provide an estimate of the time expended by their officers and employees on each of the several categories prescribed generally for union receipts and disbursements including: representational activities; union administration; general overhead; political activities and lobbying; and contributions, gifts, and grants. However, the Department is not requiring unions to keep detailed time records, and it is left up to the labor organization to determine the least burdensome way to provide the information.

Another change to the Form LM-2 is the addition of two new schedules for accounts receivable and accounts payable. The new schedules require the reporting of 1) the name of any entity or individual with which the labor organization had an account payable valued at $5,000 or more that was more than 90 days past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period, and 2) the name of any entity or individual with which the labor organization had an account receivable valued at $5,000 or more that was more than 90 days past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period. However, as noted above, the Department is not requiring Form LM-2 filers to use accrual accounting. Although the LMRDA and the current Form LM-2 already require some accrual basis accounting information, under the final rule unions may choose the method by which to track their finances – on a cash basis, accrual basis, a hybrid of the two, or some other method of accounting – so long as they can accurately report the information required by the Form LM-2.

The revised Form LM-2 also includes a new schedule for reporting their number of members by membership category. Each labor organization, however, is permitted to name and report on its own membership categories (in the same manner as it keeps its membership records). It appears from the public comments received on the Department's proposal that each union maintains membership information in some manner; however, a union will not be required to manufacture or report information for membership categories it does not keep.

The Form LM-2 also has been revised to require unions to individually identify receipts and disbursements for two of the current supporting schedules (Other Receipts and Contributions,

Gifts, and Grants) and four of the new supporting schedules (Representational Activities, Union Administration, General Overhead, and Political and Lobbying Activities). Currently, two of these schedules provide some detail about various receipts and disbursements by general groupings or bookkeeping categories to identify their purpose. However, the revised Form LM-2 will require labor organizations to individually identify receipts or disbursements, reported in six supporting schedules, of $5,000 or more, or total receipts or total disbursements, reported in each of those schedules, from an entity or individual that aggregate to $5,000 or more during the reporting period. For individually identified receipts and disbursements, unions will have to report the name, address, purpose, date, and amount associated with the transaction.

Under the final rule, labor organizations that file the Form LM-2 are required to report the major receipts and disbursements of trusts in which the labor organization has an interest. Currently, a union only has to report information about subsidiary organizations, defined as "wholly owned, wholly controlled, and wholly financed by the reporting union." Under the final rule, if a union's financial contribution to a trust, or a contribution made on the union's behalf, is less than $10,000 or the union has an interest in a trust that has annual receipts of less than $250,000, the union only has to report on Form LM-2 the existence of the trust and the amount of the union's contribution or the contribution made on the union's behalf. If the contribution is $10,000 or more and the annual receipts of the trust are $250,000 or more, the labor organization will be required to report the receipts and disbursements of the trust on the new Form T-1. Unions will be required to separately identify each entity or individual from which the trust received $10,000 or more during the reporting period. Unions will also be required to separately identify any entity or individual to which the trust made disbursements of $10,000 or more, or that aggregated

to $10,000 or more, during the reporting period. For individually identified receipts and disbursements, unions will have to report the name, address, purpose, date, and amount associated with the transaction.

Unions will not have to file a Form T-1 for organizations that meet the statutory definition of a trust if the trust files a report pursuant to 26 U.S.C. 527, or pursuant to the requirements of ERISA, or if the organization is a Political Action Committee (PAC) and files publicly available reports with a Federal or state agency. For such trusts, the union is required only to state on the Form LM-2 that such a report has been filed and where union members can obtain the report. In addition, a labor organization may substitute an independent audit for most of the information that otherwise would be required on a Form T-1, provided the audit meets certain criteria described in the preamble above.

As discussed above, the instructions to Form LM-2 also adopt the recent holding in *Chao v. Bremerton Metal Trades Council, AFL-CIO*, clarifying that any "conference, general committee, joint, or system board, or joint council," which is subordinate to a national or international labor organization is itself a labor organization under the LMRDA and will be required to file an annual financial report if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA. *See* 29 U.S.C. 402(j)(5). The Department estimates that this will add 100 new Form LM-2 filers.

Finally, under the rule, each labor organization that has annual receipts of $250,000 or more is required to file a Form LM-2 electronically with the Department. Based on reports filed with

OLMS and the experience of its investigators, the Department recognizes that a majority of current Form LM-2 filers currently use computerized recordkeeping systems and now possess, or can easily acquire, the technology necessary to submit reports in electronic form. Several OLMS field offices report that even smaller unions that file Form LM-3 reports now maintain their accounts electronically. The availability of electronic software that will permit unions that keep their records electronically to export data from their programs to the Form LM-2 software should reduce the burden of reporting financial information with the specificity required by the final rule. Under the final rule, unions have the choice to complete the reports for submission by either utilizing the Department's software to automatically transmit the information or by "cutting and pasting" the information into the Department's on-line form. If, however, a labor organization is unable to file electronically without undue burden or expense, it can request a hardship exemption from the Department. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of union members, the union will be excused from filing electronically for the period of the exemption.

4. Overview of Changes to Form LM-3:

The only revision in the final rule to Form LM-3 is the change that increases the size of labor organizations that are permitted to file the form from $199,999.99 to $249,999.99 in total annual receipts. This is required because the Form LM-2 reporting threshold is increasing to $250,000.

The instructions to Form LM-3 also adopt the holding in *Chao v. Bremerton Metal Trades Council, AFL-CIO*, as the Department's interpretation of section 3(j)(5) of the LMRDA. The Department estimates that this will add 50 new Form LM-3 filers.

5. Overview of the Form LM-4:

After carefully reviewing the comments, the Department has decided not to change the Form-LM-4 in the final rule.

6. Overview of the New Form T-1:

A labor organization will be required to file Form T-1 if it has an interest in a trust, as defined in the LMRDA; if the union and the trust each have annual receipts of $250,000 or more; and the union makes a financial contribution to the trust, or a contribution is made on the labor organization's behalf, of $10,000 or more. If a union's financial contribution to a trust, or a contribution made on the union's behalf, is less than $10,000 or the union has an interest in a trust that has annual receipts of less than $250,000, the union only has to report the existence of the trust and the amount of the union's contribution or the contribution made on the union's behalf.

Also to minimize the burden, unions will not have to file a Form T-1 for organizations that meet the statutory definition of a trust if the trust files a report pursuant to 26 U.S.C. 527, or pursuant to the requirements of ERISA, or if the organization is a Political Action Committee (PAC) and

files publicly available reports with a Federal or state agency. For such trusts, the union need only state on the Form LM-2 that such a report has been filed and where union members can obtain the report. In addition, a labor organization may choose to substitute an independent audit for most of the information that otherwise would be required on a Form T-1, provided the audit meets the criteria prescribed by the final rule. In such instances, the union is not required to provide the financial details for the trust otherwise required of filers.

The new Form T-1 follows the format of the revised Form LM-2. The Form T-1, however, is similar to Form LM-4 in that it is much shorter and requires less information than the Form LM-2. The Form T-1 includes: 20 questions that identify the trust, provide basic information (in a yes/no format), and the total amount of assets, liabilities, receipts and disbursements of the trust; a schedule that separately identifies any individual or entity from which the trust receives $10,000 or more during the reporting period; a schedule that separately identifies any entity or individual that received disbursements that aggregate to $10,000 or more from the trust during the reporting period and the purpose of disbursement; and a schedule of disbursements to officers and employees of the trust.

7. Recordkeeping and Reporting Burden Hour Estimates for the Current, Revised, and New Forms:

The Department received several comments on the recordkeeping and reporting burdens associated with the current Form LM-2, and the proposed Form LM-2 and Form T-1, and the Department's initial PRA analysis. Many union members and a number of nonprofit

organizations commented on the usefulness of the information provided on the proposed forms and expressed the view that the benefits of the additional information outweighed the marginal increase in recordkeeping and reporting costs. Other commenters expressed strong contrary views. Many of these comments already have been addressed in the preamble.

Although the Department received only a few comments that were specific to the Department's compliance with the requirements of the PRA, it did receive many comments on the NPRM PRA analysis and burden hour estimates. The AFL-CIO and the Mercatus Center, the latter an economic policy group based at George Mason University in Virginia, submitted detailed comments and data. A third commenter, the Center for Progressive Regulation (CPR), self-described in its comments as a newly formed, Washington, D.C.-based, organization of academics specializing in legal, economic and scientific issues surrounding federal regulation, expressed views critical of the Department's initial burden analysis. The latter organization, however, did not include in its submission any alternative data for the Department to consider. Some unions also submitted comments critical of the Department's analysis and provided some alternatives for the Department to consider.

The Department has carefully considered these various comments as well as the rest of the record and has relied on many of the commenters' observations in refining its burden analysis. In many instances, as identified below, the Department has used the data supplied by the commenters to better estimate how much time filers take to complete the current Form LM-2 and could take to complete the revised Form LM-2. By taking this information into account, the Department has increased the baseline burden assumptions for the current Form LM-2 that

underlie most of the Department's estimates. At the same time, the Department could not use all of the data submitted by the commenters in refining burden estimates. Some of the data, for example, was no longer relevant to the analysis because a proposed requirement was revised or eliminated altogether in the final rule necessitating the revision or elimination of the burden associated with the proposed requirement. In other instances, the information, while illustrative of problems that had been identified by a particular union or unions, could not be used to arrive at an average burden hour estimate for unions generally or within one of the defined tiers. For example, ALPA explained that it uses a particularly sophisticated accounting program in maintaining its financial information and would incur significant burden in converting their program to comply with the proposed rule, but this information could not be used to accurately estimate how many other unions have similarly sophisticated accounting programs and could incur similar burdens. Other information was not used because it was based on a misunderstanding of the NPRM. For example, some commenters stated that local unions would incur significant costs associated with converting to an accrual accounting method when the NPRM proposed no such requirement.

In most cases, the Department has reported data regarding its burden hour estimates to the nearest hundredth, as it did in the NPRM. Contrary to the perception of a few commenters, the Department's practice is not intended to suggest greater precision than the underlying data would reflect. Instead, the figures used by the Department are derived from the Department's computations based on assumptions, rounded to the nearest hundredth by an Excel spreadsheet.

a. General comments

The AFL-CIO argued that the proposed information gathering is not necessary for the proper functioning of the Department. The AFL-CIO contends that the Department's paperwork analysis in the NPRM was fundamentally flawed and dramatically underestimated the paperwork burdens and costs to unions in complying with the proposed reporting requirements. The AFL-CIO also argued that the proposed rule is not the least burdensome approach that the Department could have taken to achieve the goal of the LMRDA and the rulemaking to make union financial reports and underlying data more useful and accessible to their members. And, as a final observation, the AFL-CIO stated that the proposed rule might shift the cost of developing and implementing electronic filing upon the reporting unions.

The AFL-CIO's contention that the changes in the reporting requirements are not necessary for the proper functioning of the Department lacks merit. The Secretary is charged under section 208 of the LMRDA, 29 U.S.C. 438, with the authority and responsibility for determining "the form and publication of reports required to be filed under this title." Unions, in turn, are required to file annual reports containing certain listed minimum information "in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year." 29 U.S.C. 431(b). These reports are statutorily required, not primarily for the proper functioning of the Department, but for disclosing to the members of the organization how their dues money has been used in the past year. As stated in its proposal and supported by many of the public comments received on the proposal, the Department believes that the minimal information reported on the current Form LM-2 forms is inadequate to ensure that unions are reporting and using funds in ways their members would approve. As discussed in the preamble,

comments by union members explained their difficulties in obtaining information about their union's finances and expressed frustration in their inability to find out where their dues money was going. The more detailed reporting requirements in the final rule will increase members' awareness of how their dues money is being spent by their unions. This is consistent with the intent of the LMRDA and highlights the purpose served by the rule's information collection provisions.

The suggestion that the Department's initial burden analysis was fundamentally flawed is unpersuasive. The AFL-CIO has failed to identify any analytical shortcomings in the Department's approach. Instead, the AFL-CIO's contention rests, in large part, on its view that the Department has underestimated the baseline burden hour data used by the Department for the current Form LM-2 and that, therefore, the Department has underestimated the burden for the revised form. As discussed below, this baseline was based on what the Department believed was the accepted burden associated with the current Form LM-2, as reflected in the Department's numerous, unchallenged submissions to OMB in obtaining OMB's approval to continue using the form. Based on the information submitted by the AFL-CIO and other commenters in response to the Department's proposal, and the Departments own analysis, however, the Department has adjusted its burden hour estimates upward for the current form. These adjustments are discussed in detail below.

Contrary to the AFL-CIO's view, the Department's paperwork analysis in the NPRM was well reasoned, especially in the absence of any earlier challenge to the Department's prior assessment of the time required to prepare the current Form LM-2. As discussed below, the Department has

revised its estimates in preparing the PRA analysis for the final rule and presents a more refined assessment by the Department of any burden imposed on reporting unions under the new Form LM-2.

The Department used the AFL-CIO and other commenters' estimates when they provided information that the Department did not have and that increased the accuracy of its estimates by adding to the Department's own data and auditing experience. The Department used the following AFL-CIO data estimating the average burden for completing the current Form LM-2: 1,500 hours each for 141 national and international unions and 200 hours each for 5,038 local unions. The latter number reflects the number of unions in the 2002 OLMS e.LORS data. These figures yield a weighted average of 239 hours, which the Department rounded up to 240 hours for use in making additional burden assessments. The Department had to make some assumptions about the local unions due to the scarcity of data. The AFL-CIO only surveyed 23 local unions on their actual experience with the current form. Since the AFL-CIO did *not* include estimates for consulting, accounting, legal, or similar costs, the Department had to assume additional hours for these activities in order to arrive at a weighted average for computing a total burden estimate for filers for completing the current Form LM-2.

The AFL-CIO provided some information that appears to contradict the burden hour estimates discussed above. The AFL-CIO's report included an estimate of burden for the current Form LM-2, based on an average of 52 hours for each individual employed by a union (but without specifying the average number of individuals it used as a divisor). This figure is not consistent with its 1,500 and 200 burden hour estimate, when applied to the Department's 2001 or 2002

e.LORS data that contains the reported number of employees and officers for all Form LM-2 filers. Thus, in the Department's view, the AFL-CIO's per employee estimate may not accurately reflect a true average. For this reason, the Department chose, instead, to rely on the AFL-CIO's alternative, per union, estimate of the number of hours required to complete the current Form LM-2.

Some of the AFL-CIO data involved broad subjective or qualitative categories that could not be used to estimate burden hours. For example, the estimate that 45% of local unions said that it would be quite difficult to extremely difficult to compile the name, address, date, amount, and purpose for all charges by functional category, is illustrative of the effort associated with the itemization requirement in the final rule but can not be used to develop actual burden hour estimates. Moreover, this estimate also demonstrates that 55%, or a majority, of local unions find the change less difficult. Of course, the Department did not use the AFL-CIO's data in computing the burden of complying with the revised Form LM-2 to the extent that the data pertained to requirements that were addressed in the Department's proposal, but not embodied in the final rule.

The Department also used the AFL-CIO data on the number of unions using functional reporting to refine its recordkeeping burden estimates. Specifically, the AFL-CIO data relating to the unions' ability to itemize disbursements were used to corroborate the Department’s data and auditing experience. The Department notes, however, that the data either understate the unions' capacity to report information by functional categories or by implication shows that a substantial

number of unions are not in compliance with the current reporting requirements (the current report requires the tracking of all receipts and disbursements in order to place them in the appropriate schedule and category on the current form). However, the Department did not use the AFL-CIO data relating to problems that unions might encounter in classifying information by the categories included in the Department's proposals in developing burden hour estimates because of the subjective/qualitative nature of the information. The Department used almost all of the AFL-CIO information concerning the computer software and hardware capabilities of unions. This information added accuracy to the Department's own data and estimates.

The argument that the Department's proposal shifted the cost of developing and implementing electronic filing to unions by making unions responsible, in part, for some of the software development ignores the fact that the Department will provide, at no cost to unions, the software that allows unions to file electronically with the Department. Reporting unions, however, may be required to make changes to the way that they record the information in order to prepare the revised Form LM-2 and submit it electronically, and the Department has included the costs of such changes in the estimates discussed below. The AFL-CIO's disagreement with the Department's burden estimate in the NPRM was based, in part, on its view that unions currently experience considerable difficulty in timely reporting annual financial information, and that the Department's proposals, by adding new requirements, are overly burdensome. In support of this position, the AFL-CIO included information about the unions' current record on timeliness. While, as discussed above, the Department has used the burden hour estimates provided by the AFL-CIO to reassess the Department's estimate of the time required for completing the current forms, qualitative assessments of difficulty or timely-submission data could not be used to

develop burden hour estimates. The Department also did not utilize the information used by the AFL-CIO to support its assertion that the Department had failed to consider whether, and the extent to which, unions might need additional resources to comply with the proposal. Although this information illustrates the need to use external support staff or the need to hire additional in-house staff to address the higher burden hours associated with the revised Form LM-2, the information is not helpful for estimating average or total burden hours, but simply illustrates the choices unions have to comply with the current and final rule.

The AFL-CIO's contention that the Department could have chosen less burdensome alternatives to achieve the same objectives is unpersuasive. As demonstrated by the final rule, the Department has made numerous changes to its proposal that reduce the paperwork burden associated with the rule. Throughout the preamble, the Department has explained its position on adopting, or not, alternative proposals suggested by the commenters. The Department, in crafting the final rule, has sought to reduce the paperwork burden on unions, without compromising the Department's statutory obligation to ensure that union members are provided annual reports on their unions' finances. Both the NPRM and the final rule, in the Department's view, fully comply with its responsibilities under the LMRDA and the PRA. The final rule establishes the least burdensome approach practicable to provide union members and the Department with the information required by the LMRDA.

The comments submitted by the Mercatus Center were largely supportive of the Department's proposal, including the Department's effort to specifically estimate the burden hours associated with the unions' compliance with the proposal. The organization, however, suggested that the

burden estimates could be improved if the Department capitalized its estimates of costs and provided additional documentation of the Department's own costs associated with the rule. Although capitalization would be a reasonable alternative to the direct cost approach used in this rulemaking, the Department believes that averaging the costs over the first three years, as the Department has done here, yields approximately the same result in estimating burden. Moreover, in this rulemaking, there was relatively little to be capitalized. Only the computer equipment and software and the one-time labor costs could be considered for capitalization. In its analysis, the Department has assumed that most of the computer equipment and software would be purchased for normal business operations. The minimal additional costs associated with the final rule have been allocated in the first year. This same procedure was used for the one-time labor costs. While the procedure used by DOL does not include any "opportunity costs" for capital (*e.g.*, interest charges), DOL believes that its estimates, by using, in effect, a three year life cycle for all such costs has reasonably estimated the burden.

Mercatus estimated that the average burden associated with the Department's proposal, per union, at about 180 hours. It broke down its estimates as follows: install new software, 4 hours; design/adjust report forms and format structures, 72 hours; modify existing accounting systems, 32 hours; incorporate electric signatures, 16 hours, systems testing, 24 hours, and employee training, 32 hours (8 hours x 4 employees). To compute the compensation costs associated with these tasks, it used $27.80 as "fully loaded wage rate of union employees."

Mercatus also noted that the Department's analysis did not appropriately recognize that the Department's proposal would have an impact beyond the union's bookkeeping and accounting

staff. Mercatus noted that the rule likely would affect the manner by which union staff document or record their activities, and that such costs, though minimal on a transaction basis, will have a measurable cost in the aggregate. The Department has considered such costs in its analysis of the final rule.

b. Methodology for the Burden Estimates

In reaching its estimates, the Department considered both the one-time and recurring costs associated with the final rule. Separate estimates are included for the initial year of implementation as well as the second and third years. For filers, the Department included separate estimates, based on the relative size of unions as measured by the amount of their annual receipts. The size of a union, as measured by the amount of its annual receipts, will affect the burden on reporting unions. For example, larger unions have more receipts and disbursements to itemize and more employees who have to estimate their time allocation.

The primary impact of this final rule will be on the largest labor organizations, defined as those that have $250,000 or more in annual receipts. There are approximately 4,778 labor organizations of this size that are required to file Form LM-2 reports under the LMRDA (just 19.0 percent of all labor organizations covered by the LMRDA). The rule will also reduce the burden on 501 small unions that will be able to file Form LM-3 instead of Form LM-2 because of raising the LM-2 threshold to $250,000. These estimates are based on 2001 and 2002 data from the OLMS e.LORS system. This system contains annual receipt data on all Form LM-2, LM-3, and LM-4 filers. Although these estimates may not be predictive of the exact number of

small unions that will be impacted by this final rule in the future, the Department believes these estimates to be sound and are derived from the best available information.

The Department's estimates include costs for both labor and equipment that will be incurred by filers. The labor costs reflect the Department's assumption that the unions will rely upon the services of some or all of the following positions (either internal or external staff, including union president, union secretary-treasurer, accountant, bookkeeper, computer programmer, lawyer, consultant) and the compensation costs for these positions, as measured by wage rates and employer costs published by the Bureau of Labor Statistics or derived from data reported in e.LORS. The Department also made assumptions relating to the time that particular tasks or activities would take. The activities generally involve only one of the three distinct "operational" phases of the rule: first, tasks associated with modifying bookkeeping and accounting practices, including the modification or purchase of software, to capture data needed to prepare the required reports; and second, tasks associated with recordkeeping; and third, tasks associated with sending or exporting the data in an electronic format that can be processed by the Department's import software. Since the analysis is designed to provide estimates for a "representative" union the Department's estimates largely reflect weighted averages. Where an estimate depends upon the number of unions subject to the LMRDA or included in one of the tier groups, the Department has relied upon data in the e.LORS system (for the years stated for each example in the text or tables).

The following methodology and assumptions underlie the Department's burden estimates:

- The size of a union, as measured by the amount of its annual receipts, will affect the burden on reporting unions. Larger unions have more receipts and disbursements to itemize and more employees who have to estimate their time allocation. Three tiers, based on annual receipts, have been constructed to differentiate the burdens among Form LM-2 filers.

- A union's use of computer technology, or not, to maintain its financial accounts and prepare annual financial reports under the current rule, will affect the burden on reporting unions. Although few LM-2 filers do not have computers, the larger the union the greater likelihood that it will be using a specialized accounting program instead of commercial-off-the-shelf accounting software.

- Relative burden associated with the final rule will correspond to the following predictable stages: review of the rule, instructions, and forms; adjustments to or acquisition of accounting software and computer hardware; installation, testing, and review of the Department's reporting software; changing accounting structures and developing, testing, reviewing, and documenting accounting software queries as well as designing query reports; training union officers and

employees involved in bookkeeping and accounting functions; training union officers and employees to maintain information relating to transactions and estimating the amount of time they expend in prescribed categories; the actual recordkeeping of data under the revised procedures associated with itemizing receipts and disbursements and allocating them by functional categories; aging accounts receivable and accounts payable; allocating time for officers and employees by functional categories; preparing a download methodology to either submit electronic reports using "cut and paste" methods or the import/export technology allowing for a more automated transfer of data to the Department; the development, testing, and review of any translator software that may be required between a union's accounting software and Department's reporting software; obtaining digital signatures for the union officers; additional review by the president and secretary-treasurer; and completing a continuing hardship exemption request if necessary.

- Burden can be categorized as recurring or non-recurring, with the latter primarily associated with the initial implementation stages. Recordkeeping burden, as distinct from reporting

burden, will predominate during the first months of implementation.

- Burden can be reasonably estimated to vary over time with the greatest burden in the initial year, decreasing in later years as users gain experience. Estimates for each of the first three years and a three-year average will provide useful information to assess the burden. A weighted average provides a "snapshot" of the burden associated with the form for an individual reporting union.

- Burden can be usefully reported as an overall total for all filers in terms of hours and cost. This burden, for most purposes, can be differentiated for each individual form. The Federal burden cannot be reasonably estimated by form.

- The estimated burden associated with the current LM-forms is the appropriate baseline for estimating the burden and cost associated with the final rule.

c. Baseline Adjustments: Current Forms

After reviewing the public comments, the Department assumes that 5,038 local unions now take 200 hours and 141 national and international unions take 1,500 hours to collect and report their information on the current Form LM-2 for a weighted average of approximately 240.0 hours for each of the 5,179 respondents. In addition, the Department assumes that Form LM-2 filers take an average 24.0 hours for accounting, 16.0 hours for programming, 8.0 hours for legal review, and 4.0 hours for consulting assistance to complete the current form for an average total burden of 292.0 hours per respondent (see Table 2). Further, the Department estimates that 160.0 hours of the total is for recordkeeping burden and 132.0 hours is for reporting burden. The difference in the number of responses in Table 2 reflects that fewer unions filed LM-2's and LM-3's in 2002 than in 2001 according to OLMS e.LORS data.

The Department also estimates that 11,356 local unions will take an average 104.0 hours to collect and report their information on the current Form LM-3. In addition, the Department assumes that all Form LM-3 filers will take an average 8.0 hours for accounting and 4.0 hours for legal review to complete the current form for an average total burden of 116.0 hours per respondent (see Table 2). Further, the Department estimates that 64.0 hours of the total is for recordkeeping burden and 52.0 hours is for reporting burden. These estimates and assumptions are based on the similarity of the Form LM-3 and Form LM-2 recordkeeping and reporting requirements, as well as the relative differences in the size of the unions that complete the two forms.

The Department has also updated the average annual cost of complying with the current Form LM-2 and LM-3 recordkeeping and reporting requirements as follows: The average total cost

per respondent is $8,381 for the current Form LM-2 and $3,277 for Form LM-3. These figures include estimates for consulting, accounting, legal, and programming costs and are weighted averages across all respondents and are based on total compensation rates not hourly wage rates. The total annual cost for all respondents is estimated to be $43.4 million for Form LM-2 and $37.2 million for Form LM-3 (see Table 2). It should be noted that although it may appear that the Department has applied inconsistent dollar costs per hour to the burden hour estimates, the dollar costs per hour naturally differ between forms because of the varying amounts of accountant time, bookkeeping time, and the time of the union secretary-treasurer and president associated with each form, which yield different weighted average costs per hour.

INSERT TABLE 2 HERE

d. New Form LM-2

To estimate the burden hours and costs for the revised Form LM-2 and the new Form T-1 the Department divided Form LM-2 filers into three groups or tiers, based on the amount of unions' annual receipts. In Tier 1, there are 1,574 unions with annual receipts from $250,000 to $499,999.99. The Department assumes that unions within this tier probably use some type of commercial off-the-shelf accounting software program and will most likely use the "cut and paste" feature of the new reporting software (see Table 3). In Tier 2, there are 3,158 unions with annual receipts from $500,000 to $49.9 million. The Department assumes that unions within this tier most likely use some type of commercial off-the-shelf accounting software program and will use all of the electronic filing features of the new reporting software. Finally, in Tier 3, there are

the 46 unions with annual receipts of $50.0 million or more. The Department assumes that unions within this tier most likely use some type of specialized accounting software program and also will use all of the electronic filing features of the new reporting software. Table 3 summarizes the Characteristics of Form LM-2 filers by annual receipts.

INSERT TABLE 3 HERE

For each of the three tiers, the Department estimated burden hours for the additional nonrecurring (first year) recordkeeping and reporting requirements, the additional recurring recordkeeping and reporting burden hours, and a three-year annual average for the additional nonrecurring and recurring burden hours.

The Department estimates that LM-2 filers will spend an average of nearly $1,000 for computer hardware, hardware upgrades, accounting software, and software upgrades, and 14.6 hours to install and set up, or reconfigure the computer hardware and accounting software (these are weighted averages of $1,500 for computer hardware and $250 for accounting software across all LM-2 filers). Although many unions currently have the hardware and software that is necessary for the recordkeeping and reporting requirements of the final rule, data submitted by the AFL-CIO suggests that 21% of national and international unions and 33% of local unions would need to purchase and install new computer hardware; 11% of national and international unions and 40% of local unions would need new software; and 51% of national and international unions and 35% of local unions would need to upgrade their software. An additional 12.5% of local unions do not use computers; however, the Department assumes that 86.4% (501) of these unions will

no longer have to file the Form LM-2 because of the higher reporting threshold ($250,000) for the form. For those unions without computers, the Department also estimated that it would take an average of 14.6 (nonrecurring) hours to install and/or upgrade the computer hardware and software. In addition, for all unions the Department estimated that it would take an average of 8.9 (nonrecurring) hours to install, test, and review the OLMS reporting software.

The Department estimates that it will take unions an average of 76.8 (nonrecurring) hours to change their accounting structures; develop, test, review, and document accounting software queries; design query reports; and train accounting personnel. Unions that use a fiscal year beginning on January 1 will need to spend less than half of these hours (32.5) making changes before January 1, 2004, in order to be ready to begin the recordkeeping necessary to be able to file the revised Form LM-2. Unions will have until 90 days following the end of their fiscal year to spend the remainder of these hours (44.3) making changes that will be necessary to actually populate the Form LM-2, which will be due, at the earliest, at the end of March 2005. These estimates are based on the Department's review of a variety of accounting software packages, its evaluation of the recordkeeping requirements of the current Form LM-2, and its review of the public comments. The Department relied upon the expertise of investigators with first-hand knowledge of union financial reporting, including the use of software, to determine which four commercial off-the-shelf software packages were most commonly used by unions to maintain their finances and prepare financial reports. Using these four common off-the-shelf software packages, Department investigators determined that it was possible to set up categories or accounts tailored to capture the information necessary to comply with the requirements of the rule. The software packages tested utilize a common processing format.

Many unions with commercial-off-the-shelf accounting software will take less time and other, typically larger, unions with specialized accounting systems may take more time. Further, the public comments suggest that many unions already have accounting systems that maintain at least some, if not all, of the required information for disbursements and other receipts. Therefore, as discussed above, the Department continues to believe that unions will have adequate time to conform their accounting systems to the revised forms before the start of the first reporting period for which they will be required to report on the new Form LM-2 (no earlier than January 1, 2004).

The Department estimates an average 30-minute reduction in burden for the changes to pages one and two and Statement B of the Form LM-2 (for all three tiers) for reporting three fewer yes/no questions and 5 fewer minutes for reporting three fewer receipt categories and two less disbursement category on Statement B. The burden reduction is less for Statement B because the information that is currently reported on four lines must be still be gathered for the revised form, but are added together and reported on just one line of the revised form.

The Department estimates no reduction or increase in burden for Tier 1 filers associated with the eight unchanged schedules on the revised Form LM-2. It is assumed that Tier 1 respondents will use the same features in the new software that are in the existing OLMS software to complete these schedules. However, for Tier 2 and Tier 3 filers the Department estimates a 50% decrease (12.5 hours or 1.6 hours per unchanged schedule) in reporting burden that results from moving from the current manual or "cut and paste" method on the existing form to an electronic data export capability for the unchanged schedules on the revised form.

The Department estimated the burden associated with the three Form LM-2 schedules that are being revised: investments, all officers and disbursements to officers, and disbursements to employees. Each has a nonrecurring burden for respondents to adapt to the revisions (e.g., new schedule reporting thresholds and additional detail) of 4.7, 15.6 and 7.8 hours, respectively. For the revised officer and employee schedules, the Department estimates an average of 60 minutes of training for each officer and employee and from 30 to 60 minutes per month and an additional 60 minutes per year for each officer and employee to estimate the amount of time spent on each of the functional categories on the schedule each month and then sum them for the entire year (as described in the preamble, the Department is only requiring officers and employees, as a general rule, to estimate their time to the nearest 10%). In calculating the average time union officers and employees will spend estimating their time, the Department assumed that the task will be more time consuming for officers and employees of larger unions. For example, while the Department assumed that officers and employees of the smallest Form LM-2 filers (Tier 1, with annual receipts of less than $500,000) would spend 30 minutes a month during the year (approximately seven minutes a week) and an hour at the end of the year, the Department assumed that officers of the largest Form LM-2 files (Tier 3, with annual receipts of $50 million or more) will spend 60 minutes a month during the year (approximately 14 minutes a week) and an hour at the end of the year.

It is also assumed that Tier 1 respondents will use the same features in the new software that are in the existing OLMS software to complete the officer and employee schedules, and that it will take them an average of 2.0 additional hours to complete each schedule in addition to the average

of 6.0 hours to complete the officer schedule and 10.0 hours to complete the existing schedules. However, for Tier 2 and Tier 3 filers, the Department estimates an additional 6 hours to export and transmit data for the officer and employee schedules (3 hours for each schedule) and a 25% *decrease* in reporting burden that results from moving from the current manual or "cut and paste" method on the existing form to an electronic data export capability on the revised form. No additional recordkeeping burden is estimated for the officer and employee disbursement schedules because the Department is not requiring unions to maintain detailed time records.

For the two new schedules for accounts receivable and accounts payable, the Department estimates that on average unions will take 4.9 additional hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel. The Department also estimates that on average unions will take an additional (recurring) 0.8 hours of recordkeeping burden to age their accounts receivable and accounts payable, and an additional 1.4 (recurring) hours to prepare the new schedules. OLMS e.LORS data and the public comments suggest that many Form LM-2 filers with receipts of less than $50 million (99% of all filers) have few or no accounts receivable or accounts payable that meet the threshold for the relevant schedule and that 50% of the national and international unions already maintain accounts receivable and accounts payable in the format required by the final rule. Therefore, the Department has included a relatively small amount of additional recordkeeping and reporting burden hours associated with these schedules.

For the new "other receipts" schedule, the Department estimates that on average unions will take 10.3 additional hours (of nonrecurring recordkeeping and reporting burden) to change accounting

structures; develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel. Further, the Department also estimates that on average unions will take an additional (recurring) 0.6 hours to prepare the new schedule. The additional reporting burden is a net estimate that includes a 50% decrease in reporting burden that results from moving from the current manual or "cut and paste" method for the existing schedule to an electronic data export capability on the revised form for the Tier 2 and Tier 3 filers. Moreover, OLMS e.LORS data indicates that "other receipts" represent only 8.8% of total receipts and that the average amount that would have to be itemized on the schedule is $309,999. Therefore, Form LM-2 filers would have to electronically report at most an average of just 62 other receipts per year (and probably far less since some receipts will be more than $5,000). The Department also estimates that on average unions will take an additional (recurring) 2.7 hours of recordkeeping burden. Currently, this supporting schedule requires some detail (description and amount) for other receipts but does not require the date or name and address. The public comments also suggest that 60% of the national and international unions already maintain written records for the information required by the new "other receipts" schedule.

For the five new disbursement schedules (representational activities; union administration; general overhead; contributions, gifts and grants; and political activities and lobbying), the Department estimates that on average unions will take 10.3 additional hours (of nonrecurring recordkeeping and reporting burden) to change accounting structures; develop, test, review, and document accounting software queries; design query reports; prepare a download methodology;

and train personnel. Further, the Department also estimates that on average unions will take an additional (recurring) 6.0 hours time to prepare the new schedules. This additional reporting burden is a net estimate that includes a 50% decrease in reporting burden that results from moving from the current manual or "cut and paste" method for the existing "other disbursements," "office and administrative expense," and "contributions, gifts, and grants" schedules to an electronic data export capability on the revised form for the Tier 2 and Tier 3 filers. Moreover, OLMS e.LORS data indicates that disbursements on these five schedules account for just 23.2% of total disbursements and that the average amount that would have to be itemized on the schedules is $822,953, or $164,591 per schedule. Therefore, Form LM-2 filers would have to electronically report at most an average of just 33 disbursements per schedule per year (and probably less since some disbursements will be more than $5,000).

The Department also estimates that on average unions will take an additional (recurring) 22.0 hours of recordkeeping burden to record the name, address, and date of disbursements. Currently, three disbursement supporting schedules require some detail (description and amount) but do not require the date or name and address. The public comments also suggest that many unions maintain records as part of their normal business practice that reflect the required detail for disbursements, but that 10 to 40% of unions could not provide all of the detail required by the Department's proposal.

For the new membership schedule, the Department estimates that on average unions will take 4.9 additional hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel.

The Department also estimates that on average unions will take an additional 2.1 (recurring) hours to prepare the new schedules. Since the final rule does not require unions to manufacture or report information for membership categories they do not keep, the Department has not estimated any additional recordkeeping burden for this schedule.

For the revised Form LM-2, the Department estimates that unions will take an average of two hours to obtain each electronic signature (two signatures are needed). There is also a charge of $45 to obtain each electronic signature and a $5 processing fee. The Department also estimates that the union president and secretary-treasurer will take an average of 4 additional hours (two hours each) to review and sign the form on top of the 2.4 hours they already spend reviewing the current form. The additional time for the president and secretary-treasurer to review and sign the form declines to two hours the second year and one hour the third year as they become more familiar with the revised form.

Finally, the Department estimates that 5% of Form LM-2 filers will submit a Continuing Hardship Exemption Request in the first year and that it will take 1.0 hour to prepare this request. The Department further estimates that 3% of Form LM-2 filers will submit a hardship request in the second year and that 1% will submit a request in the third year. The Department assumes that most, if not all, of the hardship exemptions that will be requested will come from the smaller tier 1 Form LM-2 filers. Therefore, the Department estimates that there will not be a reduction or increase in reporting burden hours aside from the additional 1.0 hour to make the request since the amount of time to "cut and paste" and print the reports is not much different on average than the time to "cut and paste" and electronically submit.

INSERT TABLE 4 HERE

The Department estimates the average reporting and recordkeeping burden for the revised Form LM-2 to be 710.1 hours per respondent in the first year (including non-recurring implementation costs), 539.4 hours per respondent in the second year, and 536.0 hours per respondent in the third year. The Department estimates the total annual burden hours for respondents for the revised Form LM-2 to be 3.4 million hours in the first year, 2.6 million hours in the second and third years.

The Department estimates the average annual cost for the revised Form LM-2 to be $24,271 per respondent in the first year (including non-recurring implementation costs), $17,387 per respondent in the second year, and $17,262 per respondent in the third year. The Department also estimates the total annual cost to respondents for the revised Form LM-2 to be $116.0 million in the first year, $83.1 million in the second year, and $82.5 million in the third year (see Table 5). These amounts include the total cost of the revised Form LM-2; the cost of the changes implemented in this final rule, as noted above, is $79.9 million the first year (the difference between the combined costs of the revised Form LM-2 plus the new Form T-1 and the cost of the current Form LM-2). The average three-year cost of the final rule is $55.7 million. Moreover, as explained above, the Department believes that it is very unlikely that small unions with $250,000 in annual receipts would incur many of the costs incurred by the typical Form LM-2 filer. Even the AFL-CIO, in commenting on the more burdensome proposed Form LM-2 estimated that unions with annual receipts of less than $500,000 would incur an average cost of just $3,750 for the proposed changes.

INSERT TABLE 5 HERE

e. Form LM-3

The Department also estimates that 11,356 local unions take an average 104.0 hours to collect and report their information on the current Form LM-3. In addition, the Department assumes that all Form LM-3 filers will take an average 8.0 hours for accounting and 4.0 hours for legal review to complete the current form for an average total burden of 116.0 hours per respondent (see Table 2). Further, the Department estimates that 64.0 hours of the total is for recordkeeping burden and 52.0 hours is for reporting burden. These estimates and assumptions are based on the similarity of the Form LM-3 and Form LM-2 recordkeeping and reporting requirements, the fewer number of schedules that need to be reported on the Form LM-3, as well as the relative differences in the size of the unions that complete the two forms.

The Department has also updated the average annual cost of complying with the current Form LM-3 recordkeeping and reporting requirements to $3,277. Again, this figure includes estimates for consulting, accounting, legal, and programming costs and is a weighted average across all respondents. The dollar cost estimate is also based on total compensation costs and not hourly wage rates. The total annual cost for all respondents is estimated to be $39.0 million for Form LM-3 (see Table 6). It should be noted that although it may appear that the Department has applied inconsistent dollar costs per hour to the burden hour estimates, the dollar costs per hour naturally differ between forms because of the varying amounts of accountant time, bookkeeping

time, and the time of the union secretary-treasurer and president associated with each form, that yield different weighted average costs per hour.

INSERT TABLE 6 HERE

It should also be noted that by increasing the filing threshold for Form LM-2, 501 small unions who currently file Form LM-2 would only have to file the less burdensome Form LM-3. Each of these unions will save an average of 176 hours per year (116 hours for Form LM-3 compared to the 292 hours that they are expending to file the current Form LM-2) and altogether save 88,176 hours. In monetary savings, the increased threshold amounts to an average savings of $5,104 per year, or a total $2.6 million per year. These savings accrue because unions with annual receipts above $200,000 but less than $250,000 will be able to file the less burdensome and less costly Form LM-3. Additionally, these unions will not be required to file Form T-1 if they have a trust nor will they incur the increased costs related to the revised Form LM-2.

f. New Form T-1

To estimate the burden hours and costs for the new Form T-1 three important assumptions were made to estimate the number of responses. First, it was assumed that 15% of the 1,574 tier 1 LM-2 filers with annual revenues of from $250,000 to $499,999.99 would file one Form T-1. Second, it was assumed that 35% of the 3,158 tier 2 Form LM-2 filers with annual revenues of from $500,000 to $49.9 million would file an average of 2.6 Form T-1s. Third, it was assumed that 100% of the 46 tier 3 Form LM-2 filers with annual revenues of $50 million or more would

file an average of five T-1 reports each. Although 939 Form LM-2 filers report having a subsidiary, it is difficult to estimate how many more entities fall within the broader definition of trusts or funds to be reported under the final rule.

For each of the three tiers, the Department estimated burden hours for the additional nonrecurring (first year) recordkeeping and reporting requirements, the recurring recordkeeping and reporting burden hours, and a three year annual average for the nonrecurring and recurring burden hours similar to the way it estimated the burden hours for Form LM-2 filers (see previous discussion).

The Department estimates the burden required for preparing to complete the Form T-1 for all three tiers to be 2.4 non-recurring hours to provide the new Form T-1 requirements to the trust, 4.3 hours for reviewing the new form and instructions, and 8.0 non-recurring (first year) hours for installing, testing, and reviewing the OLMS provided software. The time to read and review the form and instructions is estimated to decline to 2.0 hours the second year and 1.0 hour the third year as unions and trusts become more familiar with the revised form. (see Table 7)

The Department estimates the average reporting burden required to complete pages one and two of the Form T-1 for each of the three tiers to be 6.1 hours and the average recordkeeping burden associated with the items on pages one and two to be 1.6 hours. These estimates are proportionally based on the recordkeeping and reporting burden estimate for the first two pages of the current Form LM-4, which are very similar to the first two pages of the new Form T-1. The first two pages of Form LM-4 have 21 items (8 questions that identify the union, four yes/no questions, seven summary numbers for:

maximum amount of bonding, number of members, total assets, liabilities, receipts, and disbursements, total disbursements to officers, and a space for additional information). The first two pages of Form T-1 have 25 items (14 questions that identify the union and trust, six yes/no questions, just four summary numbers for total assets, liabilities, receipts, and disbursements, and a space for additional information). For comparison, the first part of Form LM-3 (before the schedules) has 56 items with two statements on assets, liabilities, receipts, and disbursements.

For the new receipt and disbursement schedules the Department estimates that on average T-1 respondents will take 9.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel for each of the schedules. Further, the Department also estimates that on average Form T-1 respondents will take 1.2 (recurring) hours to prepare, transmit/report, and report the new receipts schedule and 1.4 hours to report the new disbursements schedule. The Department also estimates that on average Form T-1 respondents will take 8.3 hours (recurring) of recordkeeping burden for each schedule to maintain the additional information required by the final rule.

For the new Form T-1 disbursements to officers and employees of the trust schedule the Department estimates that it will take respondents an average 2.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel. Further, the Department estimates it will take on average 0.8 hours to prepare, export and transmit or report the new schedule. No additional recordkeeping burden is estimated for the officer and employee disbursement schedule

because the Department is not requiring trusts to maintain detailed time records over what is kept as normal business practice.

The Department also estimates that it will take 2.0 hours for the Trust to review the Form T-1 and 1.0 hours for this information to be sent to Form LM-2 filer. In addition, the Department estimates that the union president and secretary-treasurer will take 4.0 hours to review and sign the form. The time for the president and secretary-treasurer to review and sign the form declines to 2.0 hours the second year and 1.0 hour the third year as they become more familiar with the revised form.

INSERT TABLE 7 HERE

The Department estimates the average reporting and recordkeeping burden for the new Form T-1 to be 71.7 hours per respondent in the first year (including non-recurring implementation costs), 33.9 hours per respondent in the second year, and 30.4 hours per respondent in the third year (see Table 8). The Department estimates the total annual burden hours for respondents for the new Form T-1 to be 199,000 hours in the first year, 94,000 hours in the second year, and 84,000 hours in the third year. The Department estimates the average annual cost for the new Form T-1 to be $1,986 per respondent in the first year (including non-recurring implementation costs), $934 per respondent in the second year, and $838 per respondent in the third year

The Department also estimates the total annual cost to respondents for the new Form T-1 to be $5.5 million in the first year, $2.6 million in the second year, and $2.3 million in the third year.

The cost estimates are based on wage-rate data obtained from the Department's Bureau of Labor Statistics (BLS) for personnel employed in service industries (*i.e.*, accountant, bookkeeper, etc.) and adjusted to be total compensation estimates based on the BLS Employer Cost data. The estimates used for salaries of labor organization officers and employees are obtained from the annual financial reports filed with OLMS and are also adjusted to be total compensation estimates.

INSERT TABLE 8 HERE

h. Federal costs associated with final rule

The annualized federal cost associated with revised Form LM-2 and the new Form T-1 is estimated to be $7.9 million. This includes operational expenses such as equipment, overhead, and printing as well as salaries and benefits for the OLMS staff in the National Office and field offices that are involved with reporting and disclosure activities. The estimate also includes the annualized cost for redesigning the forms, developing and implementing the electronic software, and implementing digital signature capability.

G. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, the Department has evaluated the environmental safety and health effects of the final rule on children. The Department has determined that the final rule will have no effect on children.

H. Executive Order 13175 (Consultation and Coordination With Indian TribalGovernments)

The Department has reviewed this final rule in accordance with Executive Order 13175, and has determined that it does not have "tribal implications." The final rule does not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

I. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

J. Executive Order 12988 (Civil Justice Reform)

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The final rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

K. Environmental Impact Assessment

The Department has reviewed the final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department's NEPA procedures (29 CFR part 11). The final rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

L. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

This final rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 29 CFR Parts 403 and 408

Labor unions, Reporting and recordkeeping requirements.

Text of Final Rule

In consideration of the foregoing, the Department of Labor, Office of Labor-Management Standards, hereby amends parts 403 and 408 of title 29 of the Code of Federal Regulations as set forth below.

PART 403--LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

1. The authority citation for part 403 is revised to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4-2001, 66 FR 29656, May 31, 2001.

§ 403.2 [Amended]

2. Paragraph (a) of section 403.2 is amended by removing the words " . . . together with a true copy thereof" at the end of the paragraph and removing the comma preceding those words.

3. Section 403.2 is further amended by adding paragraph (d) to read as follows:

§ 403.2 Annual financial report.

* * * * *

(d) Every labor organization with annual receipts of $250,000 or more shall, except as otherwise provided, file a report on Form T-1 for every trust in which the labor organization is interested, as defined in section 3(l) of the Act, 29 U.S.C. 402(l), that has gross annual receipts of $250,000 or more, and to which $10,000 or more was contributed during the reporting period by the labor organization or on the labor organization's behalf or as a result of a negotiated agreement to which the labor organization is a party. A separate report shall be filed on Form T-1 for each such trust within 90 days after the end of the labor organization's fiscal year in the detail required by the instructions accompanying the form and constituting a part thereof, and shall be signed by the president and treasurer, or corresponding principal officers, of the labor organization**.** No Form T-1 need be filed for a trust if an annual financial report providing the same information and a similar level of detail is filed with another agency pursuant to federal or state law, as specified in the instructions accompanying Form T-1. In addition, an audit that meets the criteria specified in the Instructions for Form T-1 may be substituted for all but page 1 of the Form T-1. If, on the date for filing the annual financial report of such trust, such labor organization is in trusteeship, the labor organization that has assumed trusteeship over such subordinate labor organization shall file such report as provided in § 408.5 of this chapter**.**

§ 403.5 [Amended]

4. Paragraph (a) of section 403.5 is amended by removing the words " . . . and one copy" and removing the commas preceding and following those words.

5. Paragraph (b) of section 403.5 is amended by removing the words " . . . and one copy" and removing the commas preceding and following those words.

6. Section 403.5 is further amended by adding a new paragraph (d) to read as follows:

§ 403.5 Terminal financial report.

* * * * *

(d) If a trust in which a labor organization with $250,000 or more in annual receipts is interested loses its identity through merger, consolidation, or otherwise, the labor organization shall, within 30 days after such loss, file a terminal report on Form T-1, with the Office of Labor-Management Standards, signed by the president and treasurer or corresponding principal officers of the labor organization. For purposes of the report required by this paragraph, the period covered thereby shall be the portion of the trust's fiscal year ending on the effective date of the loss of its reporting identity.

7. Section 403.8 is amended to designate the existing text as paragraph (a).

8. Section 403.8 is further amended by adding new paragraphs (b) and (c) to read as follows:

§ 403.8 [Amended]

(b)(1) If a labor organization is required to file a report under this part using the Form LM-2 and indicates that it has failed or refused to disclose information required by the Form concerning:

(i) any disbursement, or receipt not otherwise reported on Statement B, to an individual or entity in the amount of $5,000 or more, or

(ii) any two or more disbursements, or receipts not otherwise reported on Statement B, to an individual or entity that, in the aggregate, amount to $5,000 or more,

because disclosure of such information may be adverse to the organization's legitimate interests, then the failure or refusal to disclose the information shall be deemed "just cause" for purposes of paragraph (a) of this section.

(2) Disclosure may be adverse to a labor organization's legitimate interests under this paragraph if disclosure would reveal confidential information concerning the organization's organizing or negotiating strategy or individuals paid by the labor organization to work in a non-union facility in order to assist the labor organization in organizing employees, provided that such individuals are not

employees of the labor organization who receive more than $10,000 in the aggregate in the reporting year from the union.

(3) This provision does not apply to disclosure that is otherwise prohibited by law or that would endanger the health or safety of an individual.

(c) In all other cases, a union member has the burden of establishing "just cause" for purposes of paragraph (a).

PART 408--LABOR ORGANIZATION TRUSTEESHIP REPORTS

9. The authority citation for part 408 is revised to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4-2001, 66 FR 29656, May 31, 2001.

§ 408.5 [Amended]

10. Section 408.5 is amended by adding the words " . . . and any Form T-1 reports . . . " after the words " . . . on behalf of the subordinate labor organization the annual financial report . . . " and before the words " . . . required by part 403 of this chapter . . .".

11. Section 408.5 is further amended by removing the words " . . . together with a true copy thereof" at the end of the section and removing the comma preceding those words.

Signed in Washington, D.C. this ___ day of _____, 2003.

_____

Victoria A. Lipnic

Assistant Secretary for Employment Standards

Appendix

Note: This appendix, which will not appear in the Code of Federal Regulations, contains the revised Form LM-2 and the new Form T-1 and the instructions for these forms.

Table 1 - Summary of Regulatory Flexibility Analysis

For Unions that Meet the SBA Small Entity Standard	Total Burden Hours per Respondent	Total Cost per Respondent
Average Cost of Current Form LM-2	292.0	$8,381
Average First Year Cost of Revised Form LM-2 & New Form T-1	781.7	$26,257
Percent of Average Annual Receipts	n.a.	2.3%
Average Second Year Cost	573.3	$18,322
Percent of Average Annual Receipts	n.a.	1.6%
Average Increase or Cost of Final Rule, First Year	489.7	$17,876
Percent of Average Annual Receipts	n.a.	1.6%
Average Increase or Cost of Final Rule, Second Year	281.3	$9,941
Percent of Average Annual Receipts	n.a.	0.9%
Maximum First Year Cost of Revised Form LM-2 and New Form T-1 for Unions with $250,000 to $499,999 in Annual Receipts (1)	812.9	$28,977
Maximum Second Year Cost (1)	585.2	$19,587
Maximum Increase or Cost of Final Rule, First Year (2)	520.9	$20,596
Percent of Annual Receipts for $250,000 Union	n.a.	8.2%
Percent of Annual Receipts for $500,000 Union	n.a.	4.1%
Maximum Increase or Cost of Final Rule, Second Year (2)	293.2	$11,206
Percent of Annual Receipts for $250,000 Union	n.a.	4.5%
Percent of Annual Receipts for $500,000 Union	n.a.	2.2%
Impact on Small Unions From Raising the Form LM-2 Reporting Threshold to $250,000		
Burden Hour Savings for 501 Small Unions for Being Able to Use Current Form LM-3 Instead of Current Form LM-2	176.0	$5,104
Burden Hour Savings for 501 Small Unions for Not Being Required to File Revised Form LM-2	595.2	$19,640
Burden Hour Savings for 501 Small Unions for Not Being Required to File New Form T-1	45.3	$1,253

Note: (1) Assumed to be the average burden hours for unions with annual receipts of $500,000 to $49.9 million. It is highly unlikely that the smallest Form LM-2 filers with annual receipts of $250,000 to $499,999 would incur these costs.

(2) For comparison the AFL-CIO submitted data that estimates unions with annual receipts of less than $500,000 would incur an average cost of just $3,750 for the more burdensome proposed Form LM-2. It is highly unlikely that the smallest Form LM-2 filers with annual receipts of $250,000 to $499,999 would incur these costs for the less burdensome final rule.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards.

Table 2 - Adjustments to the Annual Recordkeeping and Reporting Burden for the Current Form LM-2 and Form LM-3

Form	Number of Responses (2)	Reporting Hours per Respondent	Total Reporting Hours	Recordkeeping Hours Per Respondent	Total Recordkeeping Hours	Total Burden Hours Per Respondent	Total Burden Hours	Average Cost Per Respondent	Total Cost
Current Form LM-2									
Current Estimate	5,932	14.75	87,497	0.50	2,966	15.25	90,463	$330	$1,955,429
Adjusted Estimate (1)	5,179	132.00	683,628	160.00	828,640	292.00	1,512,268	$8,381	$43,405,199
Difference	-753	117.25	596,131	159.50	825,674	276.75	1,421,805	$8,051	$41,449,770
Current Form LM-3									
Current Estimate	12,722	6.50	82,693	0.25	3,181	6.75	85,874	$137	$1,748,686
Adjusted Estimate (1)	11,356	52.00	590,512	64.00	726,784	116.00	1,317,296	$3,277	$37,213,612
Difference	-1,366	45.50	507,819	63.75	723,604	109.25	1,231,423	$3,140	$35,464,926

Notes: (1) Adjusted burden hour estimates for the current forms are based on public comments received from Notice of Proposed Rulemaking published in the Federal Register on December 27, 2002 and 2002 OLMS e.LORS data.

(2) The difference in the number of responses results from fewer unions filing LM-2's and LM-3's in 2002 compared to 2001. Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards.

Table 3 - The Characteristics of Form LM-2 Filers by Annual Receipts

Characteristic	Average Annual Receipts $250,000 to $499,999	$500,000 to $49.999 million	$50.0 million or more	Total
Number of LM-2 Filers	1,574	3,158	46	4,778
Total Receipts	$565,711,158	$8,719,227,392	$7,599,663,402	$16,884,601,951
Average	$359,410	$2,760,997	$165,210,074	$3,533,822
Other Receipts	$47,101,405	$768,857,540	$665,172,551	$1,481,131,496
Percent of Total	8.3%	8.8%	8.8%	8.8%
Average	$29,925	$243,463	$14,460,273	$309,990
Disbursements	$152,412,897	$2,072,856,566	$1,706,799,568	$3,932,069,031
Percent of Total	26.9%	23.8%	22.5%	23.3%
Average	$96,832	$656,383	$37,104,338	$822,953
Accounts Receivable	$3,868,013	$176,381,709	$332,880,993	$513,130,715
Average	$2,457	$55,852	$7,236,543	$107,394
Accounts Payable	$7,293,258	$144,695,215	$188,315,873	$340,304,346
Average	$4,634	$45,819	$4,093,823	$71,223
Average Number of Officers	8	19	44	
Average Number of Employees	1	7	297	

Source: U.S. Department of Labor, Employment Standards Administration,
Office of Labor Management Standards, 2002 e.LORS data.

Table 4 - Summary of Average Additional First Year Burden for the Revised Form LM-2

Reporting or Recordkeeping Requirement	Nonrecurring Recordkeeping Burden Hours	Nonrecurring Reporting Burden Hours	Recurring Recordkeeping Burden Hours	Recurring Reporting Burden Hours
Review Revised Form LM-2 and Instructions	0.0	0.0	0.0	4.0
Computer Hardware and Software Installation	14.6	0.0	0.0	0.0
Install, Test, and Review OLMS Software	0.0	8.0	0.0	0.0
Page 1: No Changes	0.0	0.0	0.0	0.0
Page 2: Three Fewer Yes/No Questions	0.0	0.0	0.0	-0.5
Statement A: No Changes	0.0	0.0	0.0	0.0
Statement B: Three Fewer Summary Numbers	0.0	0.0	0.0	-0.1
Unchanged Schedules:				
Loans Receivable (1)	0.0	0.0	0.0	-1.6
Sale of Investments and Fixed Assets (1)	0.0	0.0	0.0	-1.6
Purchase of Investments and Fixed Assets (1)	0.0	0.0	0.0	-1.6
Fixed Assets (1)	0.0	0.0	0.0	-1.6
Other Assets (1)	0.0	0.0	0.0	-1.6
Loans Payable (1)	0.0	0.0	0.0	-1.6
Other Liabilities (1)	0.0	0.0	0.0	-1.6
Benefits (1)	0.0	0.0	0.0	-1.6
Revised Schedules:				
Investments (1)	0.0	4.7	0.0	-1.6
All Officers and Disbursements to Officers (1)	15.6	0.0	133.9	17.5
Disbursements to Employees (1)	7.8	0.0	69.3	8.9
New Schedules:				
Accounts Receivable	0.0	4.9	0.8	1.4
Accounts Payable	0.0	4.9	0.8	1.4
Membership Information	0.0	4.9	0.0	2.1
Other Receipts (1)	5.4	4.9	2.7	0.6
Representational Activities	5.4	4.9	4.4	2.1
Political and Lobbying Activities	5.4	4.9	4.4	2.1
Contributions, Gifts, and Grants (1)	5.4	4.9	4.4	0.6
General Overhead (1)	5.4	4.9	4.4	0.6
Union Administration (1)	5.4	4.9	4.4	0.6
Subtotal: Hours Required to Adapt Accounting Systems for New and Revised Schedules (2)	32.5	44.3	0.0	0.0
Develop, Test, and Review Translator Software	0.0	27.9	0.0	0.0
Obtain Electronic Signature	0.0	0.0	0.0	2.0
President Review and Sign Off	0.0	0.0	0.0	2.0
Treasurer Review and Sign Off	0.0	0.0	0.0	2.0
Continuing Hardship Exemption Request	0.0	0.0	0.0	0.1
Total Additional First Year Burden	70.5	84.8	229.6	33.2
Burden for Current Form LM-2	0.0	0.0	132.0	160.0
Grand Total First Year Burden for Revised Form LM-2	70.5	84.8	361.6	193.2

Notes: (1) Includes burden hours savings from electronic filing.

(2) For revised investment schedule and new receipt and disbursement schedules.

Source: U.S. Department of Labor, Employment Standards Administration, Office of

Labor-Management Standards, Paperwork Reduction Act Analysis.

Table 5 - Reporting and Recordkeeping Burden Hours and Costs for Revised Form LM-2

Form	Number of Responses	Reporting Hours Per Respondent	Total Reporting Hours	Recordkeeping Hours per Respondent	Total Recordkeeping Hours	Total Burden Hours Per Respondent	Total Burden Hours	Average Cost Per Respondent	Total Cost
Current Form LM-2	5,179	132.0	683,628	160.0	828,640	292.0	1,512,268	$8,381	$43,405,199
Revised Form LM-2									
First Year	4,778	165.2	789,279	544.9	2,603,391	710.1	3,392,670	$24,271	$115,968,841
Second Year	4,778	149.8	715,893	389.6	1,861,442	539.4	2,577,335	$17,387	$83,076,269
Third Year	4,778	146.4	699,464	389.6	1,861,442	536.0	2,560,906	$17,262	$82,475,711
Three Year Average	4,778	153.8	734,879	441.3	2,108,758	595.2	2,843,637	$19,640	$93,840,274

Note: The number of responses for revised Form LM-2 reflects a reduction of 501 filers from raising the threshold to $250,000 and an increase of 100 from including filers associated with the Bremerton decision.
Estimates for current forms are the latest adjusted estimates (see Table 2).
Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards.
Adjusted burden hour estimates for the current forms are based on public comments received from Notice of Proposed Rulemaking published in the Federal Register on December 27, 2002 and 2002 OLMS e.LORS data.

Table 6 - Reporting and Recordkeeping Burden Hours and Costs for Revised Form LM-3

Form	Number of Responses	Reporting Hours Per Respondent	Total Reporting Hours	Recordkeeping Hours per Respondent	Total Recordkeeping Hours	Total Burden Hours Per Respondent	Total Burden Hours	Average Cost Per Respondent	Total Cost
Current Form LM-3	11,356	52.0	590,512	64.0	726,784	116.0	1,317,296	$3,277	$37,213,612
Revised Form LM-3									
First Year	11,907	52.0	619,164	64.0	762,048	116.0	1,381,212	$3,277	$39,019,239
Second Year	11,907	52.0	619,164	64.0	762,048	116.0	1,381,212	$3,277	$39,019,239
Third Year	11,907	52.0	619,164	64.0	762,048	116.0	1,381,212	$3,277	$39,019,239
Three Year Average	11,907	52.0	619,164	64.0	762,048	116.0	1,381,212	$3,277	$39,019,239

Note: The number of responses for revised Form LM-3 reflects an increase of 501 filers from raising the threshold to $250,000 and an increase of 50 from including filers associated with the Bremerton decision.
Estimates for current forms are the latest adjusted estimates (see Table 2).
Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards.
Adjusted burden hour estimates for the current forms are based on public comments received from Notice of Proposed Rulemaking published in the Federal Register on December 27, 2002 and 2002 OLMS e.LORS data.

Table 7 - Summary of Average Additional First Year Burden for the New Form T-1

Reporting or Recordkeeping Requirement	Nonrecurring Burden Hours	Reporting Burden Hours	Recordkeeping Burden Hours
Information on New Form T-1 Provided to Trust	0.0	2.4	0.0
Review New Form T-1 and Instructions	0.0	4.3	0.0
Install, Test, and Review OLMS Software	8.0	0.0	0.0
Pages 1 and 2	0.0	6.1	1.6
New Schedules:			
Individually Identified Receipts	9.8	1.2	8.3
Individually Identified Disbursements	9.8	1.4	8.3
Disbursements to Officers and Employees	2.8	0.8	0.0
Review by Trust	0.0	2.0	0.0
Form/Information sent to Union	0.0	1.0	0.0
President Review and Sign Off	0.0	2.0	0.0
Treasurer Review and Sign Off	0.0	2.0	0.0
Total First Year Burden for New Form T-1	30.4	23.2	18.1

Note: Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Paperwork Reduction Act Analysis.

Table 8 - Reporting and Recordkeeping Burden Hours and Costs for New Form T-1

Form	Number of Responses	Reporting Hours Per Respondent	Total Reporting Hours	Recordkeeping Hours per Respondent	Total Recordkeeping Hours	Total Burden Hours Per Respondent	Total Burden Hours	Average Cost Per Respondent	Total Cost
New Form T-1									
First Year	2,769	23.2	64,241	48.5	134,297	71.7	198,537	$1,986	$5,499,067
Second Year	2,769	15.8	43,750	18.1	50,119	33.9	93,869	$934	$2,587,368
Third Year	2,769	12.3	34,059	18.1	50,119	30.4	84,178	$838	$2,319,873
Three Year Average	2,769	17.1	47,350	28.2	78,178	45.3	125,528	$1,253	$3,468,769

Note: Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor Management Standards.
Adjusted burden hour estimates for the current forms are based on public comments received from Notice of Proposed Rulemaking published in the Federal Register on December 27, 2002 and 2002 OLMS e.LORS data.